

## FISCAL LAW

### General Fiscal

#### *Have No Fear!*

Last year, Congress unanimously passed the Notification and Federal Employee Anti-Discrimination and Retaliation Act (No FEAR Act).<sup>1</sup> Section 201 of the Act requires federal agencies to reimburse the Judgment Fund for certain payments they make as the result of whistleblower or discrimination cases.<sup>2</sup> The purpose behind the Act is to hold the particular agency—rather than the government as a whole—financially accountable for the wrongdoing.<sup>3</sup>

#### *Publication of the Long-Awaited Fifth Volume*

In April 2002, the General Accounting Office (GAO) published Volume V of the *Principles of Federal Appropriations Law*.<sup>4</sup> Volume V contains an alphabetical listing of the topics covered in Volumes I-IV. It also contains tables of authority that cross-reference constitutional provisions, U.S. Code provisions, public and private laws, statutes, court cases, boards of contract appeals decisions, Code of Federal Regulation provisions, Federal Register documents, Department of Justice opinions, and GAO opinions and decisions discussed in Volumes I-IV.

### Purpose

#### *Let Them Eat Bison (But Only if It Is Native American Bison)*

In *Intertribal Bison Cooperative*,<sup>5</sup> the Comptroller General stewed over the issue of whether funds available for the purchase of bison meat had to be used to purchase solely from Native American producers. The earmark at issue was part of the U.S. Department of Agriculture's (USDA) appropriation to carry out the Food Stamp program. The program provided the

USDA up to \$3 million to spend on the purchase of ground bison and bison stew meat that would be distributed to participants in the Food Distribution Program for Native Americans on Reservations. The earmark specifically required the USDA to "purchase such bison from Native American producers and Cooperative Organizations without competition."<sup>6</sup>

The controversy arose when the USDA issued a Request for Proposals (RFP), indicating that it contemplated the award of a contract for ground bison and bison stew meat to a cooperative organization on a best-value basis. The RFP's statement of work indicated that the awardee cooperative organization would produce ground bison by slaughtering live bison the USDA had acquired from Native American producers and blending that meat with non-Native American bison to produce a final ground product that consisted of fifteen to twenty percent Native American bison. The RFP also stated that the awardee would produce the stew meat entirely from non-Native American sources. The Intertribal Bison Cooperative immediately filed a protest with the GAO, claiming that the USDA could only use the earmarked funds to purchase bison from Native American sources, and could only do so on a non-competitive basis.<sup>7</sup> The USDA responded by claiming that if it were going to purchase from a producer, that producer had to be a Native American firm, but if it were purchasing from a cooperative organization, it was free to purchase from a non-Native American source.<sup>8</sup>

The USDA also argued that the appropriation language was ambiguous and that its interpretation was entitled to deference. The USDA contended that the Native American sources had insufficient slaughtering and meat processing facilities. It maintained that any interpretation other than its own would thwart the purpose of the appropriation unless the GAO adopted its interpretation.<sup>9</sup> The court responded that if the USDA had interpreted the appropriation in a formal rule-making or adjudication process, then it would have granted the USDA's interpretation great deference.<sup>10</sup> In this case, because the USDA failed to develop its interpretation through a formal-

1. Pub. L. No. 107-174, 116 Stat. 566 (2002).

2. 116 Stat. at 568.

3. *Id.* at 566.

4. GEN. ACCT. OFF., PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, GAO-02-271SP (2d ed. 2002), available at <http://www.gao.gov/special.pubs/d02271sp.pdf>.

5. B-288658, 2001 U.S. Comp. Gen. LEXIS 174 (Nov. 30, 2001).

6. *Id.* at \*2.

7. *Id.* at \*2-3.

8. *Id.* at \*3. The USDA's argument was essentially that the modifier "Native American" only applied to the word immediately adjacent to it—producer—and not to the entire phrase. The opinion never explains the USDA's rationale for why it believed it could purchase the bison meat on a competitive basis. *Id.*

9. *Id.* at \*5.

10. *Id.* at \*4-5 (citing *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

ized process, the interpretation did not deserve such deference.<sup>11</sup>

The Comptroller General then reviewed several factors that both courts and boards have historically used to interpret a statute. First, it worked through the language in the appropriation to determine if there was any evidence to support something other than the plain meaning of the statute; it could not find any.<sup>12</sup> The opinion next reviewed other similar and related statutes to determine Congress's intent. This review also supported an interpretation of the appropriation that required the USDA to purchase solely from Native Americans on a non-competitive basis.<sup>13</sup>

The opinion next looked at whether the USDA applied this interpretation consistently. It first noted that this was the first time the provision had appeared in the USDA's appropriation, so there was no agency interpretation of prior years' appropriations provisions to gauge whether the agency had been consistent. The decision noted, however, that the USDA's interpretation of this year's appropriation was inconsistent because the USDA had restricted itself from purchasing live bison from only Native American sources, whereas it permitted itself to purchase bison meat from non-Native American sources.<sup>14</sup> Lastly, the opinion discussed the role of post-enactment statements by individual members of Congress to ascertain the statute's intent. The decision concluded that such statements are not legislative history, and therefore are not persuasive evidence of congressional intent without other corroborating evidence.<sup>15</sup> Applying all the above factors, the Comptroller General ultimately determined that the agency's interpretation of the appropriation was unreasonable, sustained the protest, and recommended the cancellation of the solicitation.<sup>16</sup>

The decision also responded to the USDA's argument that any interpretation other than its own would thwart the purpose

of the appropriation because there were not enough Native American slaughterers and meat processors. The decision relied upon the "necessary expense" test to come up with a possible solution. First, it noted that the appropriation only required the USDA to purchase bison meat from Native Americans; there was no requirement that the meat be slaughtered or processed before purchase. The decision then reasoned that if the USDA had to purchase live bison from Native American sources because of insufficient slaughtering and processing capacity, the USDA could separately acquire slaughtering and processing services from a non-Native American source. It also determined that the expenses associated with such slaughtering and processing would be a necessary expense of purchasing consumable bison; therefore, the USDA could use "its otherwise available operating appropriations (including this earmarked appropriation)" to purchase those services.<sup>17</sup>

*Maritime Administration Floats a Proposed Exception to the Miscellaneous Receipts Statute to the GAO*

In *Maritime Administration—Disposition of Funds Recovered from Private Party for Damage to Government Building*,<sup>18</sup> the Maritime Administration (MARAD) requested an advance opinion from the GAO concerning whether funds deposited into an escrow account had to be deposited into the general fund of the Treasury as miscellaneous receipts. The issue first appeared when a contractor, who was supposed to replace garage doors on a building at the U.S. Merchant Marine Academy, caused a fire that resulted in over \$1 million in damages to the building. The contractor's insurance company initially paid only \$166,000; the government sued the contractor for the difference under the Contract Disputes Act.<sup>19</sup> Counsel for the MARAD recognized that if the government eventually succeeded on its claim, it would have to deposit any recoveries into the Treasury's general fund.<sup>20</sup>

11. *Id.* at \*4. The decision also notes there are exceptions to this general rule when an agency's interpretation is granted deference, even though it was the result of an informal process, but the court eventually found that none of those exceptions applied to this particular case. *Id.* at \*4 n.5.

12. *Id.* at \*6-7.

13. *Id.* at \*8-9. The opinion looks at 15 U.S.C. § 637(a), commonly referred to as section 8(a) of the Small Business Act, which permits agencies to make purchases from certain disadvantaged small businesses on a non-competitive basis, and 25 U.S.C. § 47 (2000) which authorizes agencies to purchase solely from Native American firms. *Id.*

14. *Id.* at \*9.

15. *Id.* Apparently, several members of Congress sent individual letters to the USDA suggesting that the USDA should purchase the bison meat from particular suppliers. *Id.*

16. *Id.* at \*10.

17. *Id.* at \*5-6.

18. Comp. Gen. B-287738, May 16, 2002, available at <http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi>.

19. *Id.* at 1-2.

20. *Id.* at 2 (noting that this was a requirement of the Miscellaneous Receipts Statute, at 31 U.S.C. § 3302(b) (2000)).

The MARAD counsel proposed that the contractor and the government could jointly stipulate to dismiss the lawsuit and then establish an escrow account controlled by the contractor. The government and other contractors doing repair work on the damaged building could then invoice the cost of the repairs. The Department of Justice attorneys who were involved in the litigation did not concur with the escrow account concept. They felt it would “contravene the express language of the miscellaneous receipts statute.”<sup>21</sup> The contractor’s insurer eventually agreed to pay an additional \$730,000 in full settlement for the damages to the building, and the MARAD deposited all amounts received into the general fund.<sup>22</sup>

The MARAD then asked the Comptroller General whether it could handle future instances of damages by having the tortfeasor place the settlement money into an escrow account that the tortfeasor established and out of which the MARAD could draw funds to pay for repairs. The decision began by noting that the Miscellaneous Receipts Statute establishes the general rule that agencies must deposit all receipts of money into the general fund. It then noted that the Miscellaneous Receipts Statute does not apply where the tortfeasor replaces or repairs the damaged government property rather than paying damages.<sup>23</sup> The decision refused to extend this exception to the instant case, when the government did not technically receive the funds but still controlled their use. Without expressly stating it, the decision essentially rested its reasoning on the notion that a government agency may not deflect incoming money to another entity in order to avoid application of the Miscellaneous Receipts Statute.<sup>24</sup>

Another interesting decision discussing the purpose of an appropriation was *The Honorable Lane Evans*.<sup>25</sup> In *Lane Evans*, the Coast Guard asked the GAO for an opinion as to whether it could use funds appropriated to pay claims arising under the Oil Pollution Act<sup>26</sup> to pay the administrative costs associated with processing those claims as well.<sup>27</sup> Congress passed the Oil Pollution Act in 1990. It requires parties who spilled oil in the ocean to compensate others injured as a result of the spill. It also permits uncompensated injured parties to file claims with the Coast Guard.<sup>28</sup> Section 1012(a)(4) of the Act established a trust fund, which the Coast Guard would use to pay these claims.<sup>29</sup> Section 6002 of the Act made appropriations deposited into the fund no-year appropriations.<sup>30</sup> Section 1012(a)(5) also permits the Coast Guard to use up to \$25 million from the trust fund to pay the Coast Guard’s “administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act.”<sup>31</sup> Before the Coast Guard could use the trust fund for this purpose, however, Congress had to provide an annual dollar amount that the Coast Guard could use for that particular year.<sup>32</sup> Anticipating a rapid escalation in the number of Oil Pollution Act claims, the Chief Counsel of the Coast Guard opined in 1998 that the Coast Guard could also use the no-year appropriations that Congress was depositing into the trust fund to pay its indirect expenses from processing the claims.<sup>33</sup>

The decision first noted that if Section 1012(a)(5) had not been in the Act, the Coast Guard Chief Counsel’s contention that the entire balance of no-year funds would have been available to cover the costs of processing the claims would probably have been correct. This is because Section 1012(a)(4) permits the fund to be used for the “payment of claims,” and the pro-

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21. *Id.*

22. *Id.*

23. *Id.* at 3. This is because the statute only covers the receipt of *funds*. See 31 U.S.C. § 3302(b).

24. *Maritime Administration*, Comp. Gen B-287738, at 4-6.

25. B-289209, 2002 U.S. Comp. Gen. LEXIS 145 (May 31, 2002).

26. 33 U.S.C. § 2712 (2000).

27. *Lane Evans*, 2002 U.S. Comp. Gen. LEXIS 145, at \*1-2.

28. 33 U.S.C. § 2712.

29. See *id.* § 2712(a)(4).

30. See *id.* § 2752.

31. See *id.* § 2712(a)(5).

32. *Lane Evans*, 2002 U.S. Comp. Gen. LEXIS 145, at \*4.

33. *Id.* at \*3-5.

cessing of those claims would be a necessary and incidental cost of the payment process. The decision notes, however, that Congress included section 1012(a)(5) as part of the Act, and as such specifically provided an appropriation out of which the Coast Guard would pay the administrative costs of processing claims.<sup>34</sup>

Had the decision ended there, it would have been a straightforward application of the general rule that if a more specific appropriation is available, it must be used in preference to the more general appropriation. Unfortunately, the decision also addresses the need for the Coast Guard to correct its accounting records. The decision indicates that this would require the Coast Guard to de-obligate the claims processing expenses from the no-year appropriation, and to charge these expenses “instead to the annual operating expense appropriation in effect at the time those expenses were incurred.”<sup>35</sup>

It is unclear how the use of these annual operating expense appropriations does not also violate the same rule of construction concerning specific and general appropriations. Past decisions have indicated that even when the specific appropriation is exhausted—as it would have been in the instant case because the Coast Guard was spending over \$25 million a year on administrative expenses—the agency may not use the general appropriation as a back-up.<sup>36</sup>

#### *DOD ORF Regulation Updated*

The Department of Defense (DOD) reissued an updated version of the directive dealing with official representation funds (ORF) on 10 September 2002.<sup>37</sup> Although the DOD modified the structure of the directive to some extent, the substantive provisions remain relatively unchanged. Major Sharp.

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34. *Id.* at \*9-11.

35. *Id.* at \*16.

36. *See, e.g.*, Secretary of the Navy, 20 Comp. Gen. 272 (1940).

37. U.S. DEP'T OF DEFENSE, DIR. 7250.13, OFFICIAL REPRESENTATION FUNDS (10 Sept. 2002), available at [http://www.dtic.mil/whs/directives/corres/pdf/d725013\\_091002/d725013p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/d725013_091002/d725013p.pdf).

*We've Got a Long Way to Go: GAO Cites Improvements in DOD Bookkeeping Practices, but Notes Need for More Corrective Actions*

Lest one think that questionable accounting practices are strictly a private-sector phenomenon, the General Accounting Office (GAO) was hounding the Department of Defense (DOD) for creative accounting long before Enron and Arthur Andersen were household names. In July 2001, the GAO released a stinging report that concluded that the DOD, more than any other federal agency, had difficulty complying with rules intended to prevent illegal or improper adjustments to closed appropriations.<sup>1</sup> Specifically, the report noted that in fiscal year (FY) 2000, the DOD made illegal or improper adjustments to closed appropriations accounts amounting to \$615 million.<sup>2</sup> Recently, the GAO issued a follow-on report revealing the degree to which the DOD has corrected past discrepancies in its accounting practices.<sup>3</sup> As the title of the report suggests, the DOD has made improvements to its accounting practices; however, the report concludes that the DOD still needs improvement.<sup>4</sup>

In 1990, Congress addressed the issue of inadequate controls over appropriations to the DOD and other federal agencies.<sup>5</sup> Specifically, Congress required that appropriation accounts close five years after the period of availability of a fixed-termed appropriation. After closing, government agencies cannot use funds from the closed account for any purpose. Because agencies were required to keep accurate records, however, government agencies could, under very limited circumstances, adjust accounting records on closed accounts to correct unrecorded or improperly charged disbursements.<sup>6</sup>

Upon examining the DOD's records, the GAO determined that between FYs 1997 and 2001, the DOD made approximately \$12 billion in adjustments affecting closed appropriations accounts. Of this amount, \$2.7 billion represented FY 2000 adjustments alone. In its July 2001 report, the GAO concluded that in FY 2000, over \$615 million of the \$2.7 billion in adjustments on closed accounts represented illegal or otherwise improper adjustments.<sup>7</sup>

In its July 2002 report, the GAO concluded that the DOD has corrected about \$592 million of the \$615 million of problematic FY 2000 adjustments. While one would think this correction (96% of the total dollar value) would placate the most aggressive bean-counters, the GAO report stated that "this is just the starting point in addressing the problem transactions we identified."<sup>8</sup> The GAO concluded that "the challenge to correct the account after reversing these transactions is larger than the specific illegal or otherwise improper adjustments we identified."<sup>9</sup> As an example, the report noted that correcting an improper adjustment of \$210 million on a \$590 million closed contract account required revising the entire contract account. Based on DOD estimates, the GAO reported that improper FY 2000 transactions will require over 21,000 staff hours to correct.<sup>10</sup>

The good news, however, is that the GAO concluded that the DOD's actions to resolve its problems are beginning to produce positive short-term results. This conclusion is based on the GAO's observation that during the first six months of FY 2002, DOD closed account adjustments totaled only about \$200 million. This is about 80% less than the over \$1 billion of closed accounting adjustments the DOD reportedly made during the same period in FY 2001.<sup>11</sup>

The GAO cited two possible courses of action to correct the problem. First, Congress can enact new legislation to prohibit

1. See GEN. ACCT. OFF., REP. NO. GAO-01-697, *Canceled DOD Appropriations, \$615 Million of Illegal or Otherwise Improper Adjustments* (July 26, 2001) [hereinafter GAO-01-697].

2. *Id.* at 9-10, tbl. 1; see also Major John J. Siemietkowski et al., *Contract and Fiscal Law Developments of 2001—The Year in Review*, ARMY LAW., Jan./Feb. 2002, at 132 [hereinafter *2001 Year in Review*].

3. GEN. ACCT. OFF., REP. NO. GAO-02-747, *Canceled DOD Appropriations, Improvements Made but More Corrective Actions Needed* (July 31, 2002) [hereinafter GAO-02-747].

4. *Id.* at 3-6.

5. National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 1405, 104 Stat. 1678 (1990) (codified as amended at 31 U.S.C. §§ 1551-1558 (2000)).

6. *Id.*; see also *2001 Year in Review*, *supra* note 2, at 132; GAO-02-747, *supra* note 3, at 1.

7. See GAO-02-747, *supra* note 3, at 2.

8. *Id.* at 3.

9. *Id.*

10. *Id.* at 3-4.

11. *Id.* at 12.

any adjustments to a closed appropriation account.<sup>12</sup> This would certainly prevent future irregular adjustments on closed accounts. This would not allow for the correction of erroneous records, however, and could cause hardships (not to mention litigation) when the DOD failed to pay contractors for goods or services they had already rendered.<sup>13</sup> A second option is to refrain from legislative action and allow the DOD to correct its practices internally.<sup>14</sup> After allowing the DOD to comment on

its draft report, the GAO recommended against legislative changes for now. Instead, it recommended that the Secretary of Defense direct further actions to correct past improper adjustments, and monitor and prohibit such improper adjustments in the future.<sup>15</sup> Based on this feedback from the DOD, the report noted that the DOD should complete all of its audits and corrective actions by 30 September 2004.<sup>16</sup> Major Dorn.

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12. *Id.* at 19.

13. *Id.* at 19-20.

14. *Id.* at 18.

15. *Id.* at 20.

16. *Id.* at 22.

## Anti-Deficiency Act

### *It Can Happen to the Best of Us*

In a letter to the Chairman of the House Committee on Appropriations,<sup>1</sup> the General Accounting Office (GAO) found that both the Office of Management and Budget (OMB) and the Air Transportation Stabilization Board (ATSB)<sup>2</sup> had violated the Anti-Deficiency Act (ADA).<sup>3</sup> The two agencies failed to transmit an appropriate request to Congress, as required under the Air Transportation Safety and System Stabilization Act (Stabilization Act),<sup>4</sup> which resulted in the agencies' apportioning and obligating funds without budget authority.

The circumstances of this ADA violation involved a loan guarantee for America West Airlines under the Stabilization Act. Under the Stabilization Act, Congress authorized the President to extend air passenger carriers up to \$10 billion in loan guarantees for losses they incurred because of the 11 September 2001 terrorist attacks.<sup>5</sup> Although the Act designated this new budget authority as an "emergency requirement" under the Balanced Budget and Emergency Deficit Control Act of 1985 (Balanced Budget Act),<sup>6</sup> the Act required the President to send Congress a "request, that includes designation of such amount as an emergency requirement" before exercising this budget authority.<sup>7</sup>

On 28 December 2001, the ATSB approved America West's loan guarantee application. As a result, on 18 January 2002, the OMB apportioned \$172 million "to support the subsidy cost associated with the loan guarantee."<sup>8</sup> Later that same day, the

ATSB signed the loan guarantee, which created a legal obligation for purposes of the ADA.<sup>9</sup> It was not until 15 May 2002, however, that the President transmitted the required request to Congress, designating the amount as an "emergency requirement," which meant that there was no budget authority available for apportionment and obligation. As the GAO stated, "[e]ven though the [Stabilization Act] envisions no further congressional action in response to the President's request, the availability of the budget authority provided in the Act is expressly contingent upon the transmission of the request."<sup>10</sup>

Citing the ADA's provisions at 31 U.S.C. § 1341,<sup>11</sup> the GAO found that when the OMB apportioned the \$172 million without first ensuring that the President submitted the required request, it improperly authorized the obligation of funds that were not yet available. The ATSB, relying on the OMB's improper apportionment, also violated the ADA when it obligated funds before they were available, which in turn resulted in an obligation in excess of available amounts.<sup>12</sup>

This case highlights the need for agencies to ensure that they obtain all necessary approvals and notifications before they authorize or obligate appropriated funds. Quoting language from the ATSB's 25 June 2002 report of the ADA violation, the GAO stated that "[b]oth OMB and [the ATSB] erroneously assumed that all necessary steps to make the funds available had been completed."<sup>13</sup> To prevent similar occurrences in the future, the ATSB stated that it would "include a copy of the executed presidential emergency designation letter"<sup>14</sup>—general guidance that all agencies should follow.

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1. Hon. Bill Young, Comp. Gen. B-290600, July 10, 2002.

2. The ATSB reviews and approves air passenger carriers' applications for loan guarantees. Members of ATSB include the Secretary of Transportation, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, and the Comptroller General, who is a nonvoting member, or their designees. *Id.* at 1 (citing the Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, § 102(b), 115 Stat. 230, 231 (2001)).

3. See 31 U.S.C. §§ 1341(a), 1512(1), 1523(b) (2000).

4. Pub. L. No. 107-42, 115 Stat. 230 (2001).

5. Hon. Bill Young, Comp. Gen. B-290600, at 1-2 (citing Pub. L. No. 107-42, § 101(a)(1), 115 Stat. 230 (2001)).

6. See 2 U.S.C. § 901(e) (2000).

7. Hon. Bill Young, Comp. Gen. B-290600, at 2 (quoting Pub. L. No. 107-42, § 101(b), 115 Stat. 230 (2002)).

8. *Id.* at 2 n.2.

9. *Id.* (citing 2 U.S.C. § 661c(d)(1)).

10. *Id.* at 2.

11. *Id.* at 3 (noting that the relevant ADA provision "prohibits both the making or authorizing of obligations or expenditures in advance of, or in excess of, available appropriations").

12. *Id.* at 3.

13. *Id.*

14. *Id.*

The GAO provided a good review of the relationship between the Purpose Statute<sup>15</sup> and the ADA in a letter to the Chairman of the House Committee on Government Reform.<sup>16</sup> The GAO found that the Fish and Wildlife Services (FWS) violated provisions of both laws when it contracted for legal services from private law firms without proper authority, incurring and paying \$155,000 from the FWS resource management fund, a general appropriation that provided for the “necessary expenses” of the FWS.<sup>17</sup>

Examining the purpose issue first, the GAO found that the resource management appropriation was not available for legal services. While acknowledging that the resource management appropriation provided for the “necessary expenses” of the FWS,<sup>18</sup> the GAO noted that the Department of Interior Solicitor’s Office was “solely responsible for the legal work” of the entire Department, to include the FWS, and received an appropriation each year to fund such work.<sup>19</sup> The GAO reiterated the well-settled rule that “even an expenditure which may be reasonably related to a general appropriation may not be paid out of that appropriation where the expenditure falls specifically within the scope of another appropriation.”<sup>20</sup> Given the exclusive responsibility, mission, and appropriations of the Solicitor’s Office, the legal costs in question were not a “necessary expense” of the FWS’s resource management appropriation. The FWS thus violated the Purpose Statute when it spent its funds on private legal services.<sup>21</sup>

The GAO next addressed whether the FWS’s actions also violated the ADA. Even though the FWS had terminated the contracts in question because the FWS “had no appropriation

available for legal work,” the GAO quickly determined that the FWS “incurred obligations and made payments of \$155,000 in excess of available appropriations.”<sup>22</sup> As such, the GAO concluded, the FWS’s actions violated the ADA’s provision at 31 U.S.C. § 1341(a), which prohibits incurring obligations in excess or advance of appropriations.<sup>23</sup>

*“Open-Ended” Indemnification Clauses Still Contravene the ADA*

The U.S. Court of Federal Claims (COFC) also had the opportunity to address the ADA this past year in a decision that demonstrated once again that the courts disfavor “open-ended” indemnification clauses.<sup>24</sup> In *Union Pacific Railroad Corp. v. United States*,<sup>25</sup> a claim arose out of a 1970 Lead Track Agreement (LTA) between the General Services Administration (GSA) and the Union Pacific Railroad (Union Pacific) that granted Union Pacific an easement over certain railroad tracks which the GSA owned. Under the terms of the LTA, the GSA agreed to maintain the tracks. Additionally, the LTA included a general indemnification provision that stated: “The GSA will indemnify the Railroads to the extent permitted by the Federal Tort Claims Act, against claims of third persons arising from the negligence or misconduct of employees of the United States of America.”<sup>26</sup>

In September 1998, a gap in the lead track caused a derailment, which injured a Union Pacific employee. The employee sued Union Pacific and the GSA. After settling the employee’s claim, Union Pacific sought to enforce the LTA’s indemnification provision against the GSA.<sup>27</sup>

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15. See 31 U.S.C. § 1301(a) (2000).

16. Unauthorized Legal Services Contracts Improperly Charged to Resource Management Appropriation, B-290005, 2002 U.S. Comp. Gen. LEXIS 150 (July 1, 2002).

17. *Id.* at \*2-3.

18. *Id.* at \*7 (citing Pub. L. No. 106-291, 114 Stat. 922, 926 (2000)).

19. *Id.* at \*2-3 (referencing 43 U.S.C. § 1455 (2000) and a Department of Interior manual).

20. *Id.* at \*7 (citing Honorable Bill Alexander, B-213137, 1984 U.S. Comp. Gen. LEXIS 972 (June 22, 1984); Decision of the General Counsel, B-289209, 2002 Comp. Gen. LEXIS 145 (May 31, 2002); Decision of the Comptroller General, B-139510, 1959 U.S. Comp. Gen. LEXIS 2385 (May 13, 1959)).

21. *Id.*

22. *Id.*

23. *Id.*

24. See, e.g., *Hercules, Inc. v. United States*, 516 U.S. 417 (1996); *Jarvis v. United States*, 45 Fed. Cl. 19 (1999). The GAO has also long held a similar view. See generally *U.S. Park Police Indemnification Agreement*, 1991 Comp. Gen. 1070 (1991); *Assumption by Government of Contractor Liability to Third Persons—Reconsideration*, 62 Comp. Gen. 361, 83-1 CPD ¶ 501.

25. 52 Fed. Cl. 730 (2002).

26. *Id.* at 731.



Moving to dismiss for failure to state a claim, the government argued that the LTA's indemnification provision was an "open-ended" and unenforceable clause under the ADA provisions at 31 U.S.C. § 1341(a)(1). More specifically, the government contended that because no appropriation specifically "earmarked" funds to cover the potential costs of the indemnification clause under the LTA, the provision violated the ADA.<sup>28</sup>

Noting that the government failed to cite authority for its proposition that an appropriation must " earmark " funds for indemnification clauses, the COFC pointed out that Congress had appropriated funds to the GSA for the "necessary expenses" related to "property management," both at the time the parties executed the LTA and at the time the employee's claim arose.<sup>29</sup> Nevertheless, the court agreed with the government that the indemnification provision here was simply too "open-ended, as to contravene the [ADA]."<sup>30</sup>

In determining whether the LTA's indemnification provision violated the ADA, the COFC analyzed whether the obligation was "quantifiable such that it is possible to ascertain whether existing appropriations could cover the liability."<sup>31</sup> Ultimately, the court decided that the indemnification clause did not meet

this test because it was "impossible to predict the dollar amount of tort claims to which GSA would be subject."<sup>32</sup>

While the court sided with the government and granted its motion to dismiss, the COFC's ruling held open the possibility of a recovery by Union Pacific. First, the court noted that contract reformation was an available remedy if Union Pacific could demonstrate that "the contract terms reflect a mutual mistake of material fact, resulting in a contract which does not faithfully embody the parties' actual intent."<sup>33</sup> Although the COFC expressed no opinion about the likelihood that Union Pacific could succeed in such a course, it granted Union Pacific leave to seek reformation of the indemnification clause to bring it "within the realm of a definite obligation."<sup>34</sup> The COFC also noted that while Union Pacific's claim was based on the LTA's indemnification clause, "if plaintiff can establish that the settlement paid to its employee was the direct and foreseeable consequence of GSA's breach of some other contractual duty, plaintiff may seek recovery independent of GSA's obligations" under the agreement's indemnification clause.<sup>35</sup> Award on this basis would not contravene the ADA because the "Judgment Fund"<sup>36</sup> provides funds from which courts and boards may order payments.<sup>37</sup> Major Huyser.

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27. *Id.* The employee filed suit in federal district court and Union Pacific cross-claimed against the GSA for indemnification. Based on the parties' agreement that jurisdiction over the LTA indemnification clause lay with COFC, the federal district court dismissed Union Pacific's cross-claim. *Id.*

28. *Id.* at 732.

29. *Id.* at 733. Congress had appropriated \$307 million to the GSA for such purposes in Fiscal Year (FY) 1970, and had similarly appropriated approximately \$464 million to the GSA in FY 2001. *Id.* (citing Pub. L. No. 91-126, 83 Stat. 221, 224 (1969); Pub. L. No. 106-554, 114 Stat. 2763A-141 (2000)).

30. *Id.* at 733-34.

31. *Id.* at 734.

32. *Id.* The court cited two cases where the court and the GAO, respectively, had found otherwise: *National Railroad Passenger Corp. v. United States*, 3 Cl. Ct. 516 (1983) (holding that a clause providing for complete indemnification within the insurance deductible limits was not an open-ended provision), and *Honorable Howard M. Metzenbaum*, 63 Comp. Gen. 145, 148 (1984) (finding the agency's right to terminate the contract limited the government's liability under an indemnification clause such that the provision was not open-ended). *Id.*

33. *Union Pacific*, 52 Fed. Cl. at 735 (citing *Roseburg Lumber Co. v. Madigan*, 978 F.2d 660, 665 (Fed. Cir. 1992); *Northrop Grumman Corp. v. United States*, 47 Fed. Cl. 20, 41-42 (2000)).

34. *Id.* at 735. Union Pacific proposed reforming the applicable provision to specify that the government's liability would not exceed available appropriations, and that nothing in the contract would be construed as a promise that Congress would appropriate sufficient funds to meet any deficiencies. *Id.* at 734-35.

35. *Id.* at 733.

36. 31 U.S.C. § 1304(a) (2000).

37. *Union Pacific*, 52 Fed. Cl. at 733.

## Construction Funding

### *DOD O&M Construction Ceiling Raised to \$750,000 or \$1.5 Million*

In the fiscal year (FY) 2002 Department of Defense (DOD) Authorization Act, Congress raised the statutory thresholds for construction projects funded with Operations and Maintenance (O&M) funds from \$500,000 to \$750,000, and from \$1 million to \$1.5 million under the expanded life, health, and safety authority.<sup>1</sup> With the change, the secretary of a military department may use O&M funds to finance unspecified minor military construction projects costing less than \$1.5 million if the project is intended solely to correct a deficiency that threatens life, health, or safety;<sup>2</sup> if the project has any other purpose, the limit is \$750,000. The statutory change became effective on 28 December 2001. Projects approved before that date continue to carry the \$500,000 or \$1 million limitation. The services will need to revise their regulations to reflect this statutory change.<sup>3</sup>

### *You Want It, You Pay For It*

On 4 October 2002, the Army Deputy General Counsel (Ethics & Fiscal), Mr. Matt Reres, issued an opinion stating that the Army Corps of Engineers may not provide oversight on a State Department construction project in Afghanistan without being compensated for the service.<sup>4</sup> Mr. Reres cited a 1984 Comptroller General opinion stating that the “DoD’s use of O&M funds to finance civic/humanitarian activities during combined exercises in Honduras, in the absence of an interagency order or

agreement under the Economy Act, was an improper use of funds, in violation of 31 U.S.C. § 1301(a).”<sup>5</sup>

On 22 February 2000, Mr. Reres issued an opinion stating that O&M funds were the proper funding source for construction “clearly intended to meet a temporary operational requirement to facilitate combat or contingency operations.”<sup>6</sup> Within the Army, this memorandum has been interpreted as permitting the Army to use O&M funds to construct structures intended to meet a “temporary” need during combat or contingency operations, even where the costs exceed the statutory thresholds codified at 10 U.S.C. § 2805(c)(1).<sup>7</sup> In his 4 October 2002 memo, Mr. Reres cites to his 22 February 2000 opinion and notes that the construction envisioned by the State Department is neither “temporary” nor intended to “facilitate combat or contingency operations.”<sup>8</sup>

### *You Built It, You Fix It*

In addition to the new statutory ceilings for O&M construction projects, the Defense Authorization Act for FY 2002 allows the Army to experiment with the idea of making builders responsible for the upkeep of facilities they construct. This pilot program authorizes the Army to enter into three construction contracts per year for the next four years that require contractors to maintain the facilities during the first five years of operation.<sup>9</sup>

Given the amount of time it takes to plan and initiate government construction contracting, it will be several years before

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1. See National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, § 2801, 115 Stat. 1012, 1305 (2001) (codified at 10 U.S.C. § 2805(c)(1) (2000)).

2. The Authorization Act and its legislative history provide no guidance about what constitutes a “deficiency that threatens life, health, or safety.” The DOD regulations and the Service regulations do not answer this question, either. At least one Army Major Command (MACOM), U.S. Army Forces Command (FORSCOM), has issued guidance that installations must document life, health, and safety deficiencies and verbally discuss proposed projects with FORSCOM prior to using this authority. See Memorandum, Deputy Chief of Staff for Personnel and Installation Management, AFEN-ENO, to Subordinate Commanders, subject: Funding and Approval Authority (6 Mar. 2000). The Air Force requires prior approval by the Deputy Assistant Secretary of the Air Force (Installations) and congressional notification for projects solely to correct a life, health, or safety deficiency that exceed \$500,000. See U.S. DEP’T OF AIR FORCE, INSTR. 32-1032, PLANNING AND PROGRAMMING APPROPRIATED FUND MAINTENANCE, REPAIR, AND CONSTRUCTION PROJECTS para. 5.1.2.1 (25 Sept. 2001).

3. At the time of publication, the Army had not updated its governing regulation to reflect the new statutory dollar limits. See U.S. DEP’T OF ARMY, REG. 420-10, MANAGEMENT OF INSTALLATION DIRECTORATES OF PUBLIC WORKS (15 Apr. 1997). Pursuant to a memorandum issued 18 January 2002 by the Army Assistant Chief of Staff for Installation Management, however, MACOM commanders may approve projects for up to the new statutory limits at their level. Memorandum, Army Assistant Chief of Staff for Installation Management, to MACOM Commanders, subject: MACOM Maintenance and Repair Project Approval Authority (18 Jan. 2002).

4. Memorandum, Army Deputy General Counsel (Ethics & Fiscal), to Under Secretary of the Army, subject: Availability of Defense Appropriations for Construction in Afghanistan (4 Oct. 2002) [hereinafter Reres Memo].

5. See generally Hon. Bill Alexander, 63 Comp. Gen. 422 (1984) (concluding that the Purpose Statute applies to OCONUS military exercises) and (discussing the DOD’s failure to apply existing construction funding restrictions to construction projects undertaken during a series of joint and combined exercises in Honduras in the 1980s).

6. See Memorandum, Army Deputy General Counsel (Ethics & Fiscal), to Assistant Secretary of the Army (Financial Management), subject: Construction and Contingency Facility Requirements (22 Feb. 2000).

7. See 10 U.S.C. § 2805(c)(1) (2000).

8. See Reres Memo, *supra* note 4. Reading between the lines of the 4 October 2002 memo, it appears that the guidance Mr. Reres issued on 22 February 2000 is still alive and well.

the Army will be able to determine whether the program is a success. It is also uncertain how much of the anticipated expense for maintenance and repair will be added to a contract's price. Of course, this program will not affect the huge backlog for maintenance on existing facilities.<sup>10</sup>

### *President Signs Emergency Construction Authority*

On 16 November 2001, President Bush invoked his authority under the National Emergencies Act<sup>11</sup> to authorize the Secretary of Defense (SECDEF) to use the emergency construction authority at 10 U.S.C. § 2808 to carry out emergency projects that are necessary to support the American response to the 11 September terrorist attacks.<sup>12</sup> This is only the second time a president has invoked this authority, the first being in response to the Iraqi invasion of Kuwait.<sup>13</sup>

Under this authority, the SECDEF may use unobligated military construction funds to carry out construction projects necessary to support the DOD's response to the national emergency.<sup>14</sup> Although the SECDEF must notify the appropriate committees of Congress,<sup>15</sup> there is no waiting period associated with the use of this authority.<sup>16</sup>

### *Army Creating Agency to Manage Facilities*

The Army is creating a new 200-person organization to better manage its aging facilities. On 30 October 2001, the Secre-

tary of the Army approved a plan calling for the formation of the Installation Management Agency (IMA), whose task will be to ensure better management and oversight of the Army's 166,000 buildings and facilities, many of which are falling apart from lack of maintenance. The Army will house the new organization at the Pentagon. The IMA will be the single Army organization devoted to installation management.<sup>17</sup>

As a result of what has been termed an "only fix what's broken"<sup>18</sup> attitude, the Army has spent only sixty to seventy percent of the amount needed to maintain and repair its rapidly-aging inventory of buildings adequately over the last two decades, according to Major General Robert Van Antwerp, the Assistant Army Chief of Staff for Installation Management. General Antwerp noted that the Army is trying to reverse this trend, setting aside \$1.8 billion in the FY 2002 budget for building maintenance and repairs.<sup>19</sup>

### *Our Barracks Are Falling Apart*

A recent General Accounting Office (GAO) report confirms what many in the DOD have known for some time—many of the barracks housing basic trainees need extensive repairs.<sup>20</sup> Specifically, the GAO observed that DOD barracks facilities are plagued with maintenance and repair problems, such as inadequate heating and air conditioning, inadequate ventilation, and plumbing-related problems.<sup>21</sup> Although base officials told the GAO that they were able to accomplish their overall mission in spite of the problems, they noted that the deficiencies

9. See National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, § 2814, 115 Stat. 1012, 2710 (2001).

10. See Rick Maze, *Builders Responsible for Upkeep Under Army Test*, FED. TIMES, Jan. 21, 2002.

11. 50 U.S.C. § 1631 (2000).

12. Exec. Order No. 13,235, 66 Fed. Reg. 58,343 (Nov. 9, 2001).

13. See Exec. Order No. 12,734, 55 Fed. Reg. 48,099 (Nov. 14, 1990).

14. The Secretary of a military department must forward construction requests to the SECDEF through the Under Secretary of Defense for Acquisition, Technology, and Logistics. U.S. DEP'T OF DEFENSE, DIR. 4270.36, DOD EMERGENCY, CONTINGENCY, AND OTHER UNPROGRAMMED CONSTRUCTION para. 4.2.3 (17 May 1997).

15. 10 U.S.C. § 2808(b) (2000). Before exercising this authority, the SECDEF must notify the appropriate committees of Congress of: (1) the decision to use this authority; and (2) the estimated cost of the construction projects. *Id.*

16. Given the fact Congress gave the DOD a \$4 billion supplemental emergency appropriation almost immediately after the 11 September attack, there has been little need to tap into this authority. See 2001 Emergency Supplemental Act, Pub. L. No. 107-117, div. B, 115 Stat. 2230 (2002); see also Major John J. Siemietkowski et al., *Contract and Fiscal Law Developments of 2001—The Year in Review*, ARMY LAW., Jan./Feb. 2002, at 151-53.

17. George Cahlink, *New Army Agency to Focus on Fixing Old Buildings*, GOV'T EXEC. COM., Apr. 23, 2002, at <http://www.govexec.com/dailyfed/0402/042302g1.htm>.

18. *Id.*

19. *Id.*

20. GEN. ACCT. OFF., REP. NO. GAO-02-782, *Defense Infrastructure: Most Recruit Training Barracks Have Significant Deficiencies* (June 13, 2002) [hereinafter GAO-02-782].

21. *Id.* at 1-2.

had an adverse impact on the quality of life for recruits and were a burden on trainers.<sup>22</sup>

To compile the report, the GAO visited all ten basic training installations (five Army, three Marine Corps, one Navy, and one Air Force), and after examining the condition of these facilities, concluded that most needed significant repairs in varying degrees. The GAO observed that most barracks' exteriors presented a good appearance. Most of the buildings' infrastructures, however, had repair problems that had persisted over time, primarily because of inadequate maintenance.<sup>23</sup>

Although inadequate spending is one obvious culprit, the GAO reserved judgment on whether Congress should allocate greater military construction for barracks repair, pending completion of its broader, ongoing examination of the physical condition and maintenance of all DOD facilities.<sup>24</sup>

### *GAO Busy on the Property Management Front*

In addition to the barracks report, two other GAO reports requested by the House Subcommittee on Economic Development—Public Buildings, and Emergency Management—warrant passing mention.<sup>25</sup> In the first report, the Subcommittee tasked the GAO with examining whether district judges should be making greater use of shared courtroom facilities, considering the mounting cost of courthouse construction.<sup>26</sup> On 12 April 2002, the GAO reported that given the judiciary's belief "in the strong relationship between ensured courtroom availability and the administration of justice," significant courtroom sharing is unlikely in the foreseeable future.<sup>27</sup>

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22. *Id.* at 6-7.

23. *Id.* at 9-10. In general, the GAO found the conditions of the Air Force and Marine Corps San Diego barracks to be the best, while many Army and Navy barracks, along with the Marine Corps barracks at Parris Island, South Carolina, were among the worst. *Id.*

24. *Id.* at 1-2.

25. GEN. ACCT. OFF., REP. NO. GAO-02-341, *Courthouse Construction, Information on Courtroom Sharing* (April 12, 2002) [hereinafter GAO-02-341]; GEN. ACCT. OFF., REP. NO. GAO-02-342, *Federal Real Property, Better Government Wide Data Needed for Strategic Decision Making* (Apr. 16, 2002) [hereinafter GAO-02-342].

26. GAO-02-341, *supra* note 26 at 1, 3. The judiciary's most recent five-year construction plan calls for the construction of forty-five courthouses at a cost of approximately \$2.6 billion. *Id.*

27. *Id.* at 2.

28. See GAO-02-342, *supra* note 26, at 2.

29. *Id.* at 2-3.

30. *Id.* at 3. Besides containing obsolete data, the GAO also determined that the inventory did not contain certain key information, such as data concerning space utilization, facility condition, security, and age. In the GAO's opinion, this data would be very useful for budgeting and strategic management of these assets. *Id.* at 5-7. The GAO cited several factors that contributed to the problems, including poor communication between the GSA and other federal agencies, technical difficulties with agency data, resource constraints, and the GSA's lack of specific statutory authority to require agencies to submit data. *Id.* at 3.

31. *Id.* at 31-32.

32. ASBCA Nos. 52792, 53082, 02-1 BCA ¶ 31,667.

33. *Id.* at 156,483.

A few days after releasing its courtroom report, the GAO issued a second report citing serious deficiencies in the way the GSA and other government agencies manage federal property.<sup>28</sup> For about fifty years the GSA maintained the government's worldwide inventory of real property. This inventory covers over thirty federal agencies (including the DOD) and encompasses hundreds of thousands of real property assets worth billions of dollars.<sup>29</sup> In its investigation, the GAO found that the worldwide inventory for FY 2000 was not current for twelve of thirty-one real property-holding agencies, and that the data for nine agencies had not been updated since 1997.<sup>30</sup> The report notes that the GSA recognizes the problems and is taking action, such as developing a real-time database, to resolve these deficiencies.<sup>31</sup>

### *You Want Drachmas, I'll Give You Drachmas*

The Armed Services Board of Contract Appeals (ASBCA) recently held that, absent a currency fluctuation clause, the U.S. Navy's denial of a claim resulting from currency fluctuations was not unreasonable. In *Elter S.A.*,<sup>32</sup> the appellant contracted with the Navy to build a bowling alley in Greece. The government awarded Elter a firm-fixed price contract for 567,000,000 Greek drachmas, which equaled about \$2,362,500 at the time of the award.<sup>33</sup> Approximately half the contract costs consisted of procuring bowling center equipment from American firms. The contract did not have a currency fluctuation clause. At the time of the award, the exchange rate was about 240 drachmas per dollar.<sup>34</sup> By the beginning of contract performance, the drachma had plummeted to 323 per dollar. This left the appel-

lant unable to purchase the bowling equipment from the American suppliers.<sup>35</sup>

At the hearing, the appellant argued that the American government had reaped a windfall by paying with devalued drachmas and it was unconscionable to make Elter bear the loss

resulting from the currency fluctuation.<sup>36</sup> The board rejected this argument. Specifically, the board noted that by signing the contract, Elter entered into a “conscious gamble with known risks.”<sup>37</sup> Because the defense of unconscionability is not available where a loss results from an error in business judgment, the board denied Elter’s appeal.<sup>38</sup> Major Dorn.

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34. *Id.* at 156,484.

35. *Id.* at 156,484-85. By the time of contract performance, the award price devalued to the equivalent of \$1,755,400, leaving Elter about \$600,000 in the hole. *Id.*

36. *Id.* at 156,485.

37. *Id.* at 156,486.

38. *Id.*

## Intragovernmental Acquisitions

### *GAO Report Scrutinizes Multi-Agency Contract Use*

Last year's *Year in Review* reported that the Senate Governmental Affairs Committee directed the General Accounting Office (GAO) to study the government's use of multi-agency contracts, with a focus on fees charged by agencies.<sup>1</sup> A recently released GAO Report<sup>2</sup> validates the Committee's suspicions about the appropriateness and use of fees associated with multi-agency transactions.

The GAO focused on three issues of seven separate inter-agency contract programs.<sup>3</sup> The first issue was "whether the [interagency contract] programs reported total annual revenues in excess of costs (earnings or (losses)) in accordance with the Office of Management and Budget's (OMB) guidance on accounting for actual costs."<sup>4</sup> The second issue was "whether agencies with government-wide acquisition contracts (GWAC)<sup>5</sup> operate their programs consistent with OMB guidance to transfer earnings to the Treasury."<sup>6</sup> The third issue was "whether and to what extent fees charged by the General Services Administration's (GSA) Federal Supply Schedule program have generated revenues in excess of costs."<sup>7</sup>

The GAO found that some GWACs do not "identify or accurately report the full cost of providing interagency contract services."<sup>8</sup> Furthermore, some agencies used GWAC earnings to operate other programs under their revolving funds instead of transferring the earnings to the miscellaneous receipts account of the U.S. Treasury's General Fund.<sup>9</sup> Regarding GSA's Schedules Program,<sup>10</sup> the GAO concluded that the GSA overcharged schedules program customers by failing to "adjust their fees" downward, despite hefty earnings attributable to information technology sales.<sup>11</sup> The GAO recommends that GWACs comply with OMB guidance on fees, submit an annual GWAC financial report to the OMB, improve OMB-GWAC coordination on the issue of handling earnings and fees adjustment, and adjust fees related to the GSA's Schedules Program.<sup>12</sup>

### *Fees Are the Tip of the Iceberg*

According to the OMB, problems with charging and handling fees are only two of several problems associated with intragovernmental acquisitions (IGAs).<sup>13</sup> The OMB report cites the "government's inability to account for *billions* of dollars of transactions between Federal Government entities."<sup>14</sup> The OMB continues that IGAs "are paper-based, which

1. See Major John J. Siemietkowski et al., *Contract and Fiscal Law Developments of 2001—The Year in Review*, ARMY LAW., Jan./Feb. 2002, at 136-137; see also *Senate Committee Taps GAO to Study Multi-Agency Contracts*, 43 GOV'T CONTRACTOR 18, at 178 (May 2, 2001).

2. See GEN. ACCT. OFF., REP. NO. GAO-02-734, *Contract Management: Interagency Contract Program Fees Need More Oversight* (July 25, 2002) [hereinafter GAO-02-734].

3. *Id.* The seven agencies include five designated by the Office of Management and Budget (OMB) to operate information technology Government-Wide Acquisition Contracts, the Interior Department's franchise fund pilot program, and the General Services Administration's schedules program. See *Contract Management: GAO Finds Interagency Contract Services Fees Exceeds Costs*, 78 BNA FED. CONT. REP. 16, at 276 (Sept. 10, 2002).

4. See GAO-02-734, *supra* note 2, at 1.

5. *Id.* at 4. The report describes the origin, function and logistics of GWACs as follows:

The Clinger Cohen Act . . . authorized creation of GWACs, which are typically multiple-award contracts for information technology that allow an indefinite quantity of goods or services (within specified limits) to be furnished during a fixed period, with deliveries scheduled through orders with the contractor. The providing agency awards the contract, and other agencies order from it.

*Id.* (citing Clinger-Cohen Act, 40 U.S.C. § 1401 (2000); 41 U.S.C. § 251(2000)).

6. *Id.*

7. *Id.* at 1-2.

8. *Id.* at 3. Performing agencies should charge fees to ordering agencies based on direct and indirect costs associated with filling the order. The failure to document these costs adequately begs the question of whether the fees are inflated or deflated. The OMB was unaware that agencies were not following its guidance because agencies were not required to file annual reports. *Id.*

9. *Id.*

10. "The schedules program offers a large group of commercial products and services ranging from office supplies to information technology services." *Id.* at 4.

11. *Id.* at 3. The GSA is now considering options for adjusting the fees and "plans to discuss the issue with the OMB in the development of the President's fiscal year 2004 budget request." *Id.* at 4.

12. *Id.* at 14-15.

13. See OFFICE OF MGMT. AND BUDGET, FEDERAL FIN. MGMT. REP., *\$20 Billion Erroneously Paid by Federal Government in "01"* (May 1, 2002), available at [http://www.omb.gov/financial/2002/report\\_pdf](http://www.omb.gov/financial/2002/report_pdf).

increases the risk of errors, omissions, and discrepancies” and that “the lack of standardization [between the performing and ordering agencies] makes it practically impossible to verify that both parties to the business transaction have captured it correctly.”<sup>15</sup>

The OMB Report refers to “creat[ing] a gateway and clearing house to implement E-Government between Federal agencies.”<sup>16</sup> This concept should come to fruition soon. On 15

February 2002, the government issued a proposed rule that would create a new FAR subpart designed to make it easier for federal agencies to monitor and cross-reference IGAs through a database.<sup>17</sup> In addition to providing an Internet address to access the database, the new subpart would require contracting activities “to enter information into the database by a specific date on all existing contracts and other procurement instruments intended for multi-agency use.”<sup>18</sup> Major Modeszto.

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14. *Id.* at 18 (emphasis added).

15. *Id.*

16. *Id.* at 19.

17. Federal Acquisition Regulation; Electronic Listing of Acquisition Vehicles Available for Use by More Than One Agency, 67 Fed. Reg. 7255 (proposed Feb. 15, 2002) (to be codified at 48 C.F.R. pt. 5).

18. *Id.* This requirement would include all existing contracts and new contracts within ten days of award. *Id.*

## Revolving Funds

### *Illegally Parked*

Generally, the Economy Act<sup>1</sup> requires agencies to deobligate funds for incomplete or unperformed orders at the end of the fiscal year. Acquisitions in revolving funds may cross fiscal years if a bona fide need exists, and if the need is identified at the time the funds are obligated.<sup>2</sup> The Department of Defense (DOD) Office of the Inspector General (IG) recently issued a report illustrating how funds “parked” in a revolving fund with an unspecific contract or task order attached may violate the bona-fide needs rule and the Anti-Deficiency Act.<sup>3</sup> The DOD IG Report instructs agencies to identify their bona fide needs clearly for revolving fund acquisitions crossing fiscal years.<sup>4</sup>

The DOD IG Report recommended that the “Under Secretary of Defense (Comptroller) issue fiscal guidance on the use of the General Services Administration Federal System Integration and Management Center (GSA FEDSIM) Information Technology Fund (IT fund).”<sup>5</sup> The U.S. Army Claims Service (USARCS) issued Military Interdepartmental Purchase Requests (MIPR) to the GSA to procure information technology support services and products from September 1997 through September 2000.<sup>6</sup> The USARCS issued the GSA about \$8.5 million at the end of each fiscal year.<sup>7</sup> “Although USARCS could technically obligate funds at the end of a fiscal

year”<sup>8</sup> if the obligation is based on a valid need in the fiscal year of the appropriation, the IG determined that the USARCS failed to establish that a bona fide need existed at the time it provided funds to the GSA.<sup>9</sup>

The IG stated that the USARCS’s inadequate planning and unspecified MIPRs “indicated the requirements existed in the future, not the year the funds were appropriated.”<sup>10</sup> He added, “according to 31 U.S.C. [§] 1501(a)(1), agencies must have documented evidence of a binding agreement for specific goods or services to record valid obligations in financial records.”<sup>11</sup> The MIPR may establish an agreement, but the IG believed that “the MIPRs were so unspecific as to be ineffective in establishing an obligation for a bona fide need in the fiscal year in question” and constituted “a mechanism to ‘park’ funds.”<sup>12</sup> The USARCS alleged that the GSA could retain funds in its IT fund for up to five years.<sup>13</sup> The GSA IG indicated, however, that this practice failed to comply with GSA policy.<sup>14</sup> The IG also found that the USARCS’s failure to plan a four-phased software development project adequately “resulted in the use of funds from the wrong fiscal year.”<sup>15</sup> Ultimately, the IG recommended that the Army investigate potential Anti-Deficiency Act violations for obligating funds without establishing a bona fide need and using funds from the wrong year.<sup>16</sup>

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1. 31 U.S.C. § 1535 (2000).

2. Continued Availability of Expired Appropriations for Additional Project Phases, B-286929, 2001 U.S. Comp. Gen. LEXIS 211 (Apr. 25, 2001).

3. U.S. DEP’T OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL, REP. NO. D-2002-109, *Army Claims Service Military Interdepartmental Purchase Requests* (June 19, 2002) [hereinafter DOD IG Report].

4. *Id.* at 8.

5. *Id.* at 12. The GSA IT fund is a revolving fund.

6. *Id.* at 1. The USARCS’s seven approved projects “covered the following areas: GSA administrative costs; hardware and software acquisitions; hardware, software, and network acquisitions; European software development; torts and affirmative claims software development, hardware, and software acquisition support; and personnel claims software development.” *Id.* at 5.

7. *Id.* at 2. The USARCS issued a total of about \$11.6 million to the GSA during fiscal years (FY) 1997 to 2000. “About \$8.5 million were [sic] issued during the last three days of FY 97 to FY 00.” *Id.*

8. *Id.* at 7.

9. *Id.* at 8.

10. *Id.*

11. *Id.*

12. *Id.* The IG concluded, “USARCS had about \$2.8 million dollars ‘banked’ in the GSA IT fund to meet future requirements.” *Id.* at 4.

13. *Id.* at 5.

14. *Id.* at 7; see GENERAL SERVS. ADMIN., OFFICE OF THE INSPECTOR GENERAL, REP. NO. A001031 (Feb. 22, 2001), *Review of Center for Information Security Services*.

15. See DOD IG Report, *supra* note 3, at 8.

16. *Id.* at 9.



On 9 April 2002, the Air Force Headquarters Materiel Command issued a memorandum detailing the funding rules for ordering information technology from the GSA FEDSIM. The memorandum stated that the “remaining uncommitted funds must be deobligated from the IT fund if no further need for the

requirement exists or the requirements are not within the scope of the original order.”<sup>17</sup> The message is that agencies must clearly define requirements that cross fiscal years at the time of the obligation, or risk losing the funds to the general treasury at the end of the fiscal year. Major Davis.

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17. Memorandum, Headquarters, Air Force Materiel Command, to ALHQCTR/FM/SC, subject: Funding Rules for Ordering Information Technology Services from General Services Administration (GSA) (9 Apr. 2002).

## Environmental Funding

### *Wartime Rubber Producer Not Exposed to CERCLA*

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)<sup>1</sup> gives the Environmental Protection Agency (EPA) broad authority to provide for remediation of sites contaminated by hazardous waste. The EPA can either conduct the cleanup itself or direct “responsible” parties to conduct it.<sup>2</sup> CERCLA allows responsible parties, including the government, to seek contributions from other alleged responsible parties.<sup>3</sup> This was the situation in *Cadillac Fairview/California Inc. v. Dow Chemical Co.*,<sup>4</sup> a case in which the federal government sought shared liability costs from Dow Chemical Co. (Dow) for cleanup costs associated with a synthetic rubber facility in Torrance, California.<sup>5</sup>

The rubber facility, vitally important to the nation’s defense during World War II,<sup>6</sup> included a Dow-operated “styrene” plant.<sup>7</sup> Dow built the facility, but the government owned the land, plant, raw materials, by-products, wastes, and rubber. The “Rubber Reserve,” through which the government entered into agreements with private companies, exercised “unrestricted control” of all activities at the site. The contract required Dow to “carry out the orders, instructions, and specifications of [the] Rubber Reserve.”<sup>8</sup> Dow was responsible for waste disposal, but was entitled to compensation for the task. The contract also included a “broad ‘hold harmless’” agreement, which stated that Dow “shall in no event be liable for, but shall be held harm-

less by [the United States] against, any damage to or destruction of property . . . in any manner, arising out of or in connection with the work hereunder.”<sup>9</sup> Furthermore, the government made a policy decision not to divert scarce resources to stop pollution to the soil and water, although the government knew it was occurring.<sup>10</sup>

Ownership of the facility eventually passed to Cadillac Fairview, which along with Shell Oil Company,<sup>11</sup> Dow, and the federal government, was a party to a CERCLA lawsuit to determine each party’s share of the liability remediation expense. The U.S. Court of Appeals for the Ninth Circuit (Court of Appeals) found the government’s efforts to avoid payment “shocking” and affirmed a district court decision holding that placed all of the remediation expense on the United States.<sup>12</sup> The Court of Appeals rejected the government’s contention that Dow’s discretion in the waste disposal process made it partially liable. The court noted that the government “knew just what Dow was doing” with the waste and made a decision to do nothing about it.<sup>13</sup> Furthermore, the court noted the “hold harmless” clause in the contract and held that only “highly unusual facts” would allow it to impose costs on Dow.<sup>14</sup> The Court of Appeals gave no weight to the government’s argument that the court should consider the benefits to the rubber companies for their participation.<sup>15</sup> Instead, the court observed that “[r]eimbursement is, of course, no benefit at all, merely a squaring up.”<sup>16</sup> The court’s strong language and bewilderment with the government’s theory may discourage future attempts

1. 42 U.S.C. §§ 9601-9675 (2000).

2. *Id.* § 9607.

3. *Id.* § 9613(f)(1).

4. 299 F.3d 1019 (9th Cir. 2002).

5. *Id.* at 1023-24.

6. Before the construction of the facility in 1942, President Roosevelt established the “Baruch Committee” to investigate why the United States was unprepared to meet its critical demand. The committee reported that “90% of our [nation’s] prewar sources of natural rubber had been lost to Japan, and we had no substantial synthetic rubber industry.” *Id.* at 1022.

7. *Id.* at 1021-23. In 1942, Dow was the only commercial producer of Styrene, a necessary component of synthetic rubber. *Id.*

8. *Id.* Dow’s role was “more nearly analogous to a soldier’s than to a commercial tenant’s.” *Id.* at 1027.

9. *Id.* at 1023.

10. *Id.*

11. *Id.* Shell owned the site from 1955 to 1972. *Id.*

12. *Id.* at 1029.

13. *Id.* at 1026.

14. *Id.*

15. *Id.* at 1025.

16. *Id.* at 1026.

to pursue cleanup costs from private companies under similar circumstances.<sup>17</sup>

### *Reports Unveil DOD's Cleanup Cost Difficulties*

Two General Accounting Office (GAO) Reports revealed the Defense Department's (DOD) continuing difficulties in reporting costs for site cleanup costs. *GAO-02-103*<sup>18</sup> focused on fiscal years 1998 and 1999 at twelve cleanup sites and concluded that DOD guidance does not provide sufficient detail to ensure the effective collection, verification, and reporting of data on cost recoveries.<sup>19</sup> The lack of guidance resulted in inflated, incorrect, and varied recovery cost methods throughout the DOD.<sup>20</sup> The GAO recommended that the Deputy Undersecretary of Defense for Installations and Environment "modify existing guidance in areas where it is silent or unclear and provide specific guidance" related to "cost sharing arrangements," the "costs of pursuing recovery," reporting "cumulative and fiscal year data," and "capturing and reporting amounts spent by non-DOD parties under cost sharing arrangements."<sup>21</sup>

*GAO-02-117*<sup>22</sup> made similar conclusions after visiting 221 sites on six installations—two each from the Army, Air Force, and Navy. The good news is that the GAO found the "environmental site records maintained for regulatory purposes at the

individual installations to be reasonably accurate."<sup>23</sup> The bad news is that "installation property records used to maintain accountability over related land, buildings, and structures were significantly flawed."<sup>24</sup> The result is incomplete data from which to forecast cleanup costs, presently calculated as \$259.3 million.<sup>25</sup> The GAO also recommended that the Deputy Under Secretary of Defense for Installations and Environment ensure the reconciliation of environmental site and real property records. Finally, the GAO recommended that the DOD Comptroller revise the DOD Financial Management Regulation to reflect the "expanded definition of cleanup," and provide guidance to capture all cleanup costs accurately.<sup>26</sup>

The recommendations in *GAO-02-103* and *GAO-02-117* may assist the DOD to develop strategies that characterize and identify cleanup costs on active military installations. Two other GAO reports, however, illustrate the challenges of identifying and quantifying costs on "formerly used" defense sites. Although one report, *GAO-02-423*,<sup>27</sup> focuses on a specific geographical area, Guam, *GAO-02-658*<sup>28</sup> illustrates that the Army Corps of Engineers (COE) has systemic problems with the methods it uses to identify cleanup sites and estimate cleanup costs on formerly used defense sites (FUDS). The GAO concluded that the COE did "not have a sound basis for determining that about 38 percent, or 1468, of 3840 [FUDS] do not need further study or cleanup action."<sup>29</sup> Major Modeszto.

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17. *Id.* at 1029. At one point during oral argument, the court expressed amazement when the government admitted that as a "theoretical matter," American soldiers who fought the Japanese on the Aleutian Islands could be liable to pay costs for lead contamination to the ground. *Id.*

18. GEN. ACCT. OFF., REP. NO. GAO-02-103, *Defense Environmental Issues: Improved Guidance Needed for Reporting on Recovered Cleanup Costs* (Oct. 26, 2001) [hereinafter GAO-02-103]. A "site" is described as a "place on an installation where hazardous materials were released into the environment." *Id.* at 1.

19. *Id.* at 4.

20. *Id.* at 6.

21. *Id.* at 8-9.

22. GEN. ACCT. OFF., REP. NO. GAO-02-117, *Environmental Liabilities: Cleanup Costs From Certain DOD Operations Are Not Being Reported* (Dec. 14, 2001) [hereinafter GAO-02-117].

23. *Id.* at 4. "Cleanup costs are those associated with hazardous waste removal, containment, or disposal and include contamination, decommissioning, site restoration, site monitoring, closure, and postclosure costs." *Id.* at 1 n.1.

24. *Id.* at 4.

25. *Id.* at 41.

26. *Id.* at 22.

27. GEN. ACCT. OFF., REP. NO. GAO-02-423, *Environmental Cleanup: Better Communication Needed for Dealing with Formerly Used Defense Sites in Guam* (Apr. 11, 2002) (recommending several measures to improve coordination between EPA regulators and Army officials on Guam regarding contamination on formerly used defense sites).

28. GEN. ACCT. OFF., REP. NO. GAO-02-658, *Environmental Contamination: Corps Needs to Reassess Its Determinations That Many Former Defense Sites Do Not Need Cleanup* (Aug. 23, 2002).

29. *Id.* at 4.

## Liability of Accountable Officers

### *For the Love of Pets*

In *Relief of Accountable Officers—American Embassy, Brazzaville, Republic of Congo*,<sup>1</sup> the General Accounting Office (GAO) determined that the U.S. Department of State provided insufficient information to either grant or deny relief from liability for a U.S. Embassy employee. In 1991, widespread violence required the U.S. Embassy staff in Kinshasa, Zaire, to evacuate to the embassy in Brazzaville, Congo. Ms. Slocum, the administrative officer for the Brazzaville Embassy, denied requests from Kinshasa embassy personnel to evacuate their pets, and she informed them that such expenses were personal and not payable with government funds. Some unknown person evacuated the pets on Air Afrique, but no one could establish who authorized or arranged the evacuation. Air Afrique later billed the embassy employees for the pet evacuation.<sup>2</sup>

In June 1993, violence again required the Brazzaville Embassy personnel to evacuate. Air Afrique demanded \$27,634.07 for the 1991 Kinshasa pet evacuation before it would agree to evacuate the embassy personnel. Ms. Slocum

relied on Kinshasa embassy staff instructions and paid Air Afrique from Kinshasa's Suspense Deposit Abroad (SDA) account. The SDA account is "a fund maintained at overseas posts from which payments for personal expenses can be made on behalf of and as directed by" embassy employees and other authorized individuals.<sup>3</sup> Normally, embassy personnel deposit funds into the account before any withdrawals, but there was no record of any deposits into the SDA account before Ms. Slocum's payment.<sup>4</sup> The Department of State Chairperson for the Committee of Inquiry into Fiscal Irregularities (Committee) requested that the GAO relieve Ms. Slocum from liability.<sup>5</sup>

The GAO is authorized to relieve certifying officers of liability for the loss of public money when "the certification is based on official records and the official did not know and by reasonable diligence and inquiry could not have discovered the correct information."<sup>6</sup> The Committee, however, failed to provide the information needed to grant or deny this relief.<sup>7</sup> The GAO acknowledged the "less than ideal" circumstances surrounding the payment, but required more specific information to "evaluate the circumstances of the Air Afrique payment, the liabilities of the parties involved, and whether any relief is warranted."<sup>8</sup> Major Davis.

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1. Letter from the U.S. General Accounting Office to Mr. Ronald L. Miller, Chairperson, Committee of Inquiry into Fiscal Irregularities, U.S. Department of State (May 29, 2002) [hereinafter GAO Letter] (on file with author). Zaire is now known as the Democratic Republic of the Congo. CountryWatch.com, *Congo (DRC)* (Jan. 10, 2003), at [http://www.countrywatch.com/cw\\_country.asp?vcountry=40](http://www.countrywatch.com/cw_country.asp?vcountry=40).

2. GAO Letter, *supra* note 1, at 1-2. Ms. Slocum learned about the pet evacuation from a cable communication indicating that Embassy personnel were billed for pet evacuations.

3. *Id.* at 2.

4. *Id.* Embassy employees would deposit money into the fund "from which payments for personal expenses could be made on behalf of and as directed by the depositors." *Id.*

5. *Id.* at 1.

6. *Id.* at 2 (citing 31 U.S.C. § 3528(b)(1)(A) (2002)).

7. Specifically, the GAO considered the following factors:

the authority under which the Embassy holds and administers the SDA account; the accountability guidance or procedures regarding the administration of the SDA account; the role/identity of the Kinshasa Embassy official who approved the payment and the State Department's view of that individual's responsibility in the matter; the specific source of the payment and the role/identity of the disbursing officer who paid Air Afrique, and the State Department's view of that individual's responsibility in this matter.

*Id.* at 4-5.

8. *Id.* at 3. The GAO indicated that other personnel, including the disbursing officer, could be liable for the improper payment. *Id.* at 3.

## Appendix A

### Department of Defense (DOD) Legislation for Fiscal Year 2003

As in past issues, this *Year in Review* examines some of the more significant provisions in the annual Department of Defense (DOD) legislative acts that impact the fields of government contracting and fiscal law. The bulk of this article addresses the annual DOD Authorization and Appropriations Acts,<sup>1</sup> but in the aftermath of 11 September 2001 and during a continuing global War on Terrorism, Congress passed additional legislation to address increased funding needs and security concerns. This year's summary provides an overview of some of those acts—the Supplemental Appropriations Act,<sup>2</sup> the Security Assistance Act,<sup>3</sup> the Homeland Security Act,<sup>4</sup> and the Afghanistan Freedom Support Act<sup>5</sup>—and discusses certain provisions that could affect the DOD and the government contracting and fiscal law community.

### DEPARTMENT OF DEFENSE APPROPRIATIONS ACT FOR 2003

After what one article deemed a “tortured and dysfunctional appropriations season,”<sup>6</sup> President Bush signed the fiscal year (FY) 2003 Department of Defense Appropriations Act (Appropriations Act) on 23 October 2002.<sup>7</sup> The Appropriations Act appropriated about \$355.1 billion to the DOD<sup>8</sup>—about \$20.8 billion more than Congress appropriated for FY 2002, but about \$11.6 billion less than what President Bush requested.<sup>9</sup>

#### Military Personnel

##### *Department of the Army*

Congress appropriated about \$26.85 billion for “Military Personnel, Army,”<sup>10</sup> an increase of about \$3 billion over last year's appropriation.<sup>11</sup> This amount is sufficient to continue to support an active force of 480,000 soldiers.<sup>12</sup>

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1. Bob Stump National Defense Authorization Act for Fiscal Year 2003, Pub. L. No. 107-314, § 401, 116 Stat. 2458, 2554 (2002) [hereinafter 2003 DOD Authorization Act]; Dep't of Defense Appropriations Act, 2003, Pub. L. No. 107-248, 116 Stat. 1519 (2002) [hereinafter 2003 DOD Appropriations Act].

2. Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, 2002, Pub. L. No. 107-206, 116 Stat. 820 [hereinafter Supplemental Appropriations Act].

3. Foreign Relations Authorization Act for Fiscal Year 2003, Pub. L. No. 107-228, div. B, 116 Stat. 1350, 1425 (2002) [hereinafter 2003 FRAA].

4. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 296 [hereinafter HSA].

5. Afghanistan Freedom Support Act of 2002, Pub. L. No. 107-327, 116 Stat. 2797 [hereinafter AFSA].

6. *Congress Faces Crucial Week on Spending Bills*, GOVEXEC.COM (Sept. 23, 2002), at <http://207.27.3.29/dailyfed/0902/092302cdaml.htm>.

7. 2003 DOD Appropriations Act, Pub. L. No. 107-248, 116 Stat. 1519 (2002). The joint conference report accompanying the Appropriations Act requires the DOD to comply with the language and allocations set forth in the underlying House and Senate reports, unless they are contrary to the bill or joint conference report. H.R. CONF. REP. NO. 107-732, at 61 (2002); *see also* H.R. REP. NO. 107-532 (2002); S. REP. NO. 107-213 (2002).

8. H.R. CONF. REP. NO. 107-732, at 331 (2002). The conference report breaks down the appropriations as follows:

Military Personnel—\$93,577,552,000;  
Operations and Maintenance—\$114,780,258,000;  
Procurement—\$71,548,217,000;  
Research, Development, Test, and Evaluation—\$58,608,506,000;  
Revolving and Management Tools—\$2,727,585,000;  
Other DOD Programs—\$17,372,813,000.

*Id.* at 63, 89, 139, 228, 389-90.

9. *Id.* at 331.

10. 2003 DOD Appropriations Act, tit. I, 116 Stat. 1519 (2002). Congress also appropriated about \$3.4 billion for “Reserve Personnel, Army,” and about \$5.1 billion for “National Guard Personnel, Army.” *Id.* These amounts represent increases of about \$800 million and \$1 billion, respectively, over last year's appropriation. *See* 2002 Dep't of Defense Appropriations Act for Fiscal Year 2002, Pub. L. No. 107-117, div. A, tit. I, 115 Stat. 2230, 2231-32 [hereinafter 2002 DOD Appropriations Act].

### *Department of the Navy*

Congress appropriated about \$21.9 billion for “Military Personnel, Navy” and about \$8.5 billion for “Military Personnel, Marine Corps,”<sup>13</sup> an increase of about \$2.3 billion for the Navy and \$1.2 billion for the Marine Corps over last year.<sup>14</sup> These amounts are sufficient to support an active force of 375,700 sailors and 175,000 marines.<sup>15</sup>

### *Department of the Air Force*

Congress appropriated about \$21.9 billion for “Military Personnel, Air Force,” an increase of about \$2.1 billion compared to last year.<sup>16</sup> This amount is sufficient to support an active force composed of 359,000 airmen.<sup>17</sup>

## **Emergency and Extraordinary Expenses and CINC Initiative Funds**

Congress authorized the Secretary of Defense (SECDEF) and the service secretaries to use a portion of their Operation and Maintenance (O&M) appropriations for “emergencies and extraordinary expenses.”<sup>18</sup> In addition, Congress gave the SECDEF the authority to make \$25 million of the Defense-Wide O&M appropriation available for the Commander in Chief (CINC) initiative fund account.<sup>19</sup>

## **Overseas Contingency Operations Transfer Fund (OCOTF)**

Congress appropriated \$5 million for “expenses directly relating to Overseas Contingency Operations by U.S. military forces.”<sup>20</sup> As in past years, funds appropriated to the OCOTF remain available until expended; however, the SECDEF may transfer them to the

11. See 2002 DOD Appropriations Act, div. A, tit. I, 115 Stat. at 2231-32.

12. See 116 Stat. at 2554.

13. 2003 DOD Appropriations Act tit. I. Congress also appropriated \$1.9 billion for “Reserve Personnel, Navy,” and \$554 million for “Reserve Personnel, Marine Corps.” *Id.* The Navy appropriation represents an increase of about \$200 million and the Marine Corps appropriation a slight decrease—about \$8 million—from last year. See 2002 DOD Appropriations Act, div. A, tit. I, 115 Stat. at 2231-32.

14. See *id.*

15. See 2003 DOD Authorization Act § 401. These figures represent a decrease of 300 sailors and an increase of 2400 marines compared to last year’s end-strength numbers. See National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, § 401, 115 Stat. 1012, 1069 (2001) [hereinafter 2002 DOD Authorization Act].

16. 2003 DOD Appropriations Act tit. I. Congress also appropriated about \$1.2 billion for “Reserve Personnel, Air Force,” and \$2.1 billion for “National Guard Personnel, Air Force.” *Id.* These amounts represent increases of about \$100 million and \$300 million, respectively, compared to last year. 2002 DOD Appropriations Act, div. A., tit. I.

17. See 2003 DOD Authorization Act § 401. This figure represents an increase of 200 airmen from last year. See 2002 DOD Authorization Act, § 401.

18. 2003 DOD Appropriations Act tit. II. Congress capped this authority at \$10,818,000 for the Army, \$4,415,000 for the Navy, \$7,902,000 for the Air Force, and \$34,500,000 for the DOD. *Id.*; see also 10 U.S.C.S. § 127 (LEXIS 2003) (authorizing the Secretary of Defense, the DOD Inspector General, and the secretaries of the military departments to provide for “any emergency or extraordinary expense which cannot be anticipated or classified”). Additionally, while recognizing that the practice of retaining a portion of operation and maintenance in reserve for emergency needs has some “utility,” the conference report expressed “concern . . . with the recent growth in the amounts retained in management reserve funds.” H.R. CONF. REP. NO. 107-732, at 90 (2002). Stating that the growth in such reserve funds “call[s] into question the budget justification process,” the conference report directs limits on the amounts the service department chiefs and secretaries may hold in these reserve funds at \$50,000,000 for the Army, Navy, and Air Force, and \$10,000,000 for the Marines. *Id.*

19. 2003 DOD Appropriations Act tit. II (Operation and Maintenance, Defense-Wide); see also 10 U.S.C.S. § 166a (LEXIS 2003) (authorizing the Chairman of the Joint Chiefs of Staff to provide funds from the CINC Initiative Fund to combatant commanders for specified purposes). The Appropriations Act also provides \$4,675,000 “for expenses relating to certain classified activities.” 2003 DOD Appropriations Act tit. II (Operation and Maintenance, Defense-Wide). The funds remain available until expended; the SECDEF may transfer such funds to O&M appropriations or to research, development, test, and evaluation (RDT&E) accounts. The \$100,000 ceiling on investment items purchased with O&M funds does not apply under these circumstances. *Id.*; cf. *id.* § 8040.

20. 2003 DOD Appropriations Act tit. II (Overseas Contingency Operations Transfer Fund). This is a decrease of \$45 million from last year and a significant decrease from the nearly \$4 billion that Congress gave the DOD in fiscal year (FY) 2001. See 2002 DOD Appropriations Act, div. A, tit. II (Overseas Contingency Operations Transfer Fund); Department of Defense Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-259, 114 Stat. 656, 661 (2001). The reduction reflects Congress’s belief that it should fund operations in such places as the Balkans and in Southwest Asia, previously funded through the OCOTF, through the services’ O&M and military personnel appropriations. See H.R. CONF. REP. NO. 107-350, at 209 (2001).

military personnel accounts; O&M accounts; the Defense Health Program appropriation; procurement accounts; research, development, test, and evaluation (RDT&E) accounts; or working capital funds.<sup>21</sup> The transfer or obligation of these funds for purposes not directly related to the conduct of overseas contingencies is also prohibited, and the SECDEF must submit a report each fiscal quarter detailing certain transfers to the congressional appropriations committees.<sup>22</sup>

### **Overseas Humanitarian, Disaster, and Civic Aid**

Congress appropriated \$58.4 million for the DOD's Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) program.<sup>23</sup> These funds are available until 30 September 2004.<sup>24</sup>

### **Former Soviet Union Threat Reduction**

Congress appropriated \$416.7 million for assistance to the republics of the former Soviet Union. This assistance is limited to activities related to the elimination, safe and secure transportation, and storage of nuclear, chemical, and other weapons in those countries, including efforts aimed at non-proliferation of these weapons. Congress again included authority to use these funds for "defense and military contacts."<sup>25</sup> These funds are available until 30 September 2005.<sup>26</sup>

### **Drug Interdiction and Counter-Drug Activities**

The Department of Defense received \$882 million for drug interdiction and counter-drug activities.<sup>27</sup>

### **End-of-Year Spending Limited**

Congress continued to limit the ability of the SECDEF and the service secretaries to obligate funds during the last two months of the fiscal year to twenty percent of the applicable appropriation.<sup>28</sup>

### **Multi-Year Procurement Authority**

Congress again prohibited the service secretaries from awarding multi-year contracts that: (1) exceed \$20 million for any one year of a contract; (2) provide for unfunded contingent liability that exceeds \$20 million; or (3) are advance procurements which will lead to multi-year contracts in which procurement will exceed \$20 million in any one year of a contract, unless the service secretary notifies Congress at least thirty days before award. Congress also continues to prohibit the service secretaries from awarding multi-year contracts for more than \$500 million unless Congress specifically provided for the procurement in the Appropriations Act.<sup>29</sup> Congress specifically provided for three multi-year procurements in this year's Appropriations Act: the Air Force's procurement of C-130 aircraft; the Army's procurement under the Family of Medium Tactical Vehicles (FMVT); and the Navy and Marine Corps procurement of engines for the F/A-18E and F.<sup>30</sup>

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21. 2003 DOD Appropriations Act tit. II (Overseas Contingency Operations Transfer Fund).

22. *Id.* § 8130.

23. *Id.* tit. II (Overseas Humanitarian, Disaster, and Civic Aid). The DOD provides humanitarian, disaster, and civic aid to foreign governments pursuant to several statutes. *See, e.g.*, 10 U.S.C. §§ 401-402, 404, 2547, 2551 (2000).

24. 2003 DOD Appropriations Act tit. II (Overseas Humanitarian, Disaster, and Civic Aid).

25. *Id.* tit. II (Former Soviet Union Threat Reduction).

26. *Id.*

27. *Id.* tit. VI (Drug Interdiction and Counter-Drug Activities, Defense).

28. *Id.* § 8004. This limitation does not apply to the active duty training of reservists, or the summer camp training of Reserve Officer Training Corps (ROTC) cadets. *Id.*

29. *Id.* § 8008. Congress continued the requirements for a present-value analysis to determine whether a multi-year contract will provide the government with the lowest total cost, as well as an advance notice at least ten days before terminating a multi-year procurement contract. *Id.*

## Commercial Activities Studies

Under current law, if a DOD agency wishes to convert a function it currently performs in-house to contractor performance, the agency must first notify Congress of its intent and conduct a cost analysis to determine whether contractor performance will be cheaper.<sup>31</sup> In this year's Appropriations Act, Congress once again granted the DOD a waiver to the study requirement, permitting agencies to make direct conversions of their functions if the performance of those functions will go to: (1) a Javits-Wagner-O'Day (JWOD) Act<sup>32</sup> firm that employs severely handicapped or blind employees; or (2) a firm that is fifty-one percent under the control of an American Indian tribe or Native Hawaiian organization.<sup>33</sup> Congress also continued the prohibition on the use of funds to perform studies under *Office of Management and Budget (OMB) Circular A-76* if the Government exceeds twenty-four months to perform a study of a single function activity, or forty-eight months to perform a study of a multi-function activity.<sup>34</sup>

## Military Installation Transfer Fund

Congress continued to authorize the SECDEF to enter into executive agreements that permit the DOD to deposit the funds it receives from North Atlantic Treaty Organization (NATO) member nations for the return of overseas military installations to those nations into a separate account. The DOD may use this money to build facilities which Congress has approved to support U.S. troops in those nations, or for real property maintenance and base operating costs that are currently paid through money transfers to host nations.<sup>35</sup>

## Limit on Transfer of Defense Articles and Services

The Appropriations Act again prohibits the transfer of defense articles or services (other than intelligence services) to another nation or international organization during peacekeeping, peace enforcement, or humanitarian assistance operations, without advance congressional notification.<sup>36</sup>

## Limitation on Training of Foreign Security Forces

Unless the SECDEF determines that a waiver is required, the DOD may not use funds available under the 2003 Appropriations Act to support training programs of foreign security forces units if "credible information" exists that the unit has committed a gross violation of human rights.<sup>37</sup>

## Required Actions of DOD Chief Information Officer

No funds appropriated in the 2003 Appropriations Act are available for a mission-critical or mission-essential information technology system until the system is registered with the DOD Chief Information Officer (CIO).<sup>38</sup> For major automated information systems, the CIO must also certify that the system is compliant with the Clinger-Cohen Act of 1996<sup>39</sup> before Milestone A, B, or full-rate

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30. *Id.*; *cf. infra* notes 84-86.

31. 10 U.S.C.S. § 2461 (LEXIS 2003).

32. *See* 41 U.S.C.S. §§ 46-48c (LEXIS 2003).

33. 2003 DOD Appropriations Act § 8014.

34. *Id.* § 8022.

35. *Id.* § 8018.

36. *Id.* § 8066. This provision originally appeared in the Defense Appropriations Act for FY 1996, Pub. L. No. 104-61, § 8117, 109 Stat. 636, 677 (1995).

37. 2003 DOD Appropriations Act § 8080. Congress has included this same provision in DOD appropriations acts since FY 1999. *See, e.g.*, Department of Defense Appropriations Act for Fiscal Year 1999, Pub. L. No. 105-262, § 8130, 112 Stat. 2279, 2335 (1998).

38. 2003 DOD Appropriations Act § 8088(a). The Department of Defense Appropriations Act for FY 2000 first required registration with the Chief Information Officer. Pub. L. No. 106-79, § 8121(a), 113 Stat. 1212, 1261 (1999).

39. Pub. L. No. 104-106, §§ 4001-4002, 110 Stat. 642 (1996) (codified in scattered sections of 10, 40, and 41 U.S.C.).



### **Matching Disbursements with Obligations**

Section 8106 of the Defense Appropriations Act, 1997,<sup>41</sup> required the DOD, before making a disbursement for more than \$500,000, to match that intended disbursement with an obligation. In this year's Appropriations Act, Congress extends that requirement to cover disbursements made in FY 2003.<sup>42</sup>

### ***U.S.S. Greenville* Claims**

The Secretary of the Navy is again granted the authority to settle any admiralty claims arising from the collision between the *U.S.S. Greenville* and the *Ehime Maru*, regardless of their dollar amount.<sup>43</sup>

### **Funds for the War on Terrorism**

The Appropriations Act specifies that of the O&M funds appropriated under Title II, not less than \$1 billion is available for prosecuting the global War on Terrorism.<sup>44</sup>

### **Building and Maintaining Strong Families**

The Appropriations Act gives the service secretaries the authority to use available FY 2003 departmental O&M funds to support chaplain-led programs that assist in building and maintaining strong families. Covered costs include "transportation, food, lodging, supplies, fees, and training materials for members of the Armed Forces and their family members while participating in such programs, including participation at retreats and conferences."<sup>45</sup>

### **Boeing Lease Program**

Last year, Congress granted the Air Force authority to establish a multi-year pilot program to lease up to 100 Boeing 767s and four Boeing 737s.<sup>46</sup> In granting this authority to the Air Force, Congress also exempted the pilot program from the normal lease-versus-purchase analysis usually required in government contracting.<sup>47</sup> This year, Congress revised its guidance to permit the Air Force to make payments under the leasing program for up to a year in advance, and to allow the Air Force to make these payments from O&M, lease, or aircraft procurement funds available at the time of lease or when payment is due.<sup>48</sup>

### **F-22 Limitations**

The 2003 Appropriations Act provides no funds for the acquisition of more than sixteen F-22 aircraft until the Undersecretary of Defense for Acquisition, Technology, and Logistics provides the appropriate congressional committees a formal risk assessment

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40. 2003 DOD Appropriations Act § 8088(c). The Undersecretary of Defense (Comptroller) must certify that the DOD is developing and managing the system in accordance with the DOD Financial Management Modernization Plan. *Id.* § 8088(b).

41. Pub. L. No. 104-208, § 8106, 110 Stat. 3009, 3111 (1996).

42. 2003 DOD Appropriations Act § 8098.

43. *Id.* § 8102 (indicating that the payment source will be O&M, Navy appropriations).

44. *Id.* § 8114.

45. *Id.* § 8116.

46. 2002 DOD Appropriations Act, § 8159.

47. *Id.* (exempting the program from 10 U.S.C. § 2401a (2000)).

48. *Id.* § 8117. For additional discussion of legislative provisions related to the Boeing Lease Program, see *infra* notes 72-73 and 87-88.

for increasing F-22 quantities and a certification that increasing these quantities in FY 2003 involves lower risk and lower total program costs than keeping the number at sixteen.<sup>49</sup>

### Financing and Fielding of Key Army Capabilities

The Appropriations Act also directs the DOD and the Department of the Army to make budget and program plans to fully finance the Non-Line of Sight Objective Force cannon and resupply vehicle program, and to ensure that the Army fields the system by 2008.<sup>50</sup> To provide interim capability for light and medium forces before deployment of the Objective Force, the Appropriations Act further directs the Army to ensure that program and budget plans provide for the fielding of no fewer than six Stryker Brigade Combat Teams between 2003 and 2008.<sup>51</sup>

### Government Purchase and Travel Cards

In response to reported abuses of the DOD government purchase card and government travel card, the Appropriations Act limits the total number of accounts for DOD purchase and travel cards to 1.5 million accounts during FY 2003. The Appropriations Act also requires the DOD to evaluate the creditworthiness of individuals before it issues them purchase or travel cards, and prohibits the DOD to issue cards to individuals it finds are not creditworthy. Additionally, the Appropriations Act requires the DOD to establish disciplinary guidelines and procedures for the “improper, fraudulent, or abusive use” of the cards.<sup>52</sup> The guidelines and procedures are to apply “uniformly among the Armed Forces and among the elements of the Department.”<sup>53</sup>

### SUPPLEMENTAL APPROPRIATIONS ACT FOR FURTHER RECOVERY FROM AND RESPONSE TO TERRORIST ATTACKS ON THE UNITED STATES, 2002

On 2 August 2002, President Bush signed the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States (Supplemental Appropriations Act).<sup>54</sup> The Supplemental Appropriations Act appropriated an additional \$29 billion for homeland security and defense, as well as aid for relief efforts in New York City.<sup>55</sup> Interestingly, of the \$29 billion in additional funding, Congress earmarked nearly \$5 billion as emergency contingency funds, but required the President to either accept all of the contingent amounts within thirty days of the Supplemental Appropriations Act’s enactment, or reject the funds entirely.<sup>56</sup> President Bush elected not to designate the entire contingent funds as “emergency,” and thus rejected the additional \$5 billion in funding.<sup>57</sup>

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49. 2003 DOD Appropriations Act § 8119. The Appropriations Act also provides no funds for the sale of the F-22 to foreign governments. *Id.* § 8077.

50. *Id.* § 8121. This system is seen as a lighter and more deployable alternative to the recently cancelled Crusader program. Global Security, *Objective Force Cannon, Non-Line-of-Sight (NLOS) Cannon* (Dec. 1, 2002), at <http://www.globalsecurity.org/military/systems/ground/fcs-nlos.htm>.

51. 2003 DOD Appropriations Act § 8121.

52. *Id.* § 8149.

53. *Id.*

54. Pub. L. No. 107-206, tit. I, 116 Stat. 820 (2002). Title II of the Supplemental Appropriations Act enacts the American Service Members’ Protection Act (ASMPA), addressing the International Criminal Court and its lack of jurisdiction over members of the U.S. Armed Forces. *Id.* tit. II.

55. *Id.* The Supplemental Appropriations Act appropriated about \$14.3 billion to the DOD. H.R. CONF. REP. NO. 107-593, at 127 (2002). The Committee Report breaks down the appropriations as follows:

Military Personnel—\$206,000;  
Operations and Maintenance—\$12,947,135;  
Procurement—\$1,455,265;  
Research, Development, Test, and Evaluation—\$282,600.

*Id.*

56. Supplemental Appropriations Act § 1401; *see also* H.R. CONF. REP. NO. 107-593, at 186.

57. *President Bush Rejects \$5 Billion in Contingent Emergent Spending*, 44 GOV’T CONTRACTOR 31, ¶ 321 (2002) (noting that the President viewed only \$1 billion of the contingency funds as “needed, while the other \$4 billion was unrelated to a national emergency”).

## O&M Funds

### *O&M Funds, Defense-Wide*

The Supplemental Appropriations Act provides \$722 million in Defense-Wide O&M funds, to remain available until 30 September 2003. From this amount, \$390 million is available to reimburse Pakistan, Jordan, and other “key cooperating nations” for support they provided for the War on Terrorism. The Supplemental Appropriations Act further provides that the SECDEF may make these payments “in his discretion, based on documentation determined by [him] to adequately account for the support provided, in consultation with [the OMB] and [fifteen] days following notification to the appropriate Congressional committees.”<sup>58</sup>

### *Defense Emergency Response Fund*

To fund the incremental costs of military operations and mobilization to conduct the War on Terrorism,<sup>59</sup> the Supplemental Appropriations Act appropriates \$11.9 billion for the Defense Emergency Response Fund, to remain available until 30 September 2003. Of this amount, \$77.9 million will be available for enhancements to the North American Air Defense Command.<sup>60</sup>

## RDT & E Funds

### *Crusader Next Generation Artillery System*

While the Supplemental Appropriations Act does not mention the Crusader artillery system, the accompanying conference report made it clear the conferees “strongly oppose” the process the DOD used to terminate the Crusader program.<sup>61</sup> The “usual practice” for such a policy decision includes proposing the action in the initial budget submission “to allow Congress sufficient time . . . to scrutinize the merits.”<sup>62</sup> The DOD did not follow this practice in the case of the Crusader. Instead, after submitting an initial FY 2003 budget request of about \$475 million for the program, the DOD submitted a budget amendment on 29 May 2002 to “immediately terminate the Crusader program,” giving Congress “virtually no time to properly examine the merits” of the proposal.<sup>63</sup> The conferees nevertheless concluded that “the justification for the Crusader program has diminished significantly” based on the Army’s plan to “accelerate the fielding of the Future Combat System to the 2008 timeframe.”<sup>64</sup> Believing it “imperative that the Army accelerate its plan to develop a next generation artillery cannon . . . to take advantage of the \$2 billion investment in . . . technology developed under the Crusader program,” the conferees directed the Army to enter “a follow-on contract immediately to leverage Crusader technology to the maximum degree possible.”<sup>65</sup>

### *V-22 Osprey Funds Available for Special Operations Forces*

The Supplemental Appropriations Act amends the “Research, Development, Test and Evaluation, Navy” provision in the Defense Appropriations Act, 2002,<sup>66</sup> to provide that funds appropriated and made available under the paragraph for the V-22 Osprey program “may be used to meet unique requirements of the Special Operation Forces.”<sup>67</sup>

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58. Supplemental Appropriations Act, tit. I, ch. 3 (Operation and Maintenance, Defense-Wide).

59. H.R. CONF. REP. NO. 107-593, at 128 (2002).

60. Supplemental Appropriations Act, tit. I, ch. 3 (Defense Emergency Response Fund).

61. H.R. CONF. REP. NO. 107-593, at 132 (2002).

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. 2002 DOD Appropriations Act, Pub. L. No. 107-117, div. A, tit. IV, 115 Stat. 2230, 2243 (2002).

67. Supplemental Appropriations Act, § 301. The conference report provides additional guidance, stating the funds are available “for the Special Operations Forces requirements related to the V-22 aircraft.” H.R. CONF. REP. NO. 107-593, at 133 (2002).

## **Assistance to Colombia**

Granting “broader authority” to the DOD for assistance to Colombia,<sup>68</sup> the Supplemental Appropriations Act allows the DOD to use funds available for assistance to Colombia to support a “unified campaign against narcotics trafficking, against activities by organizations designated as terrorist organizations, . . . and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.”<sup>69</sup> The SECDEF must certify to Congress that a proposed action satisfies the Supplemental Appropriations Act’s provisions at section 601(b) before taking such an action.<sup>70</sup> The Supplemental Appropriations Act also prohibits the participation of U.S. Armed Forces personnel or contractor employees in “any combat operation” in connection with such assistance, except for purposes of “self defense.”<sup>71</sup>

## **Boeing Lease Program**

The Supplemental Appropriations Act provides that “[d]uring the current fiscal year and hereafter” the provisions at 10 U.S.C. § 2533a<sup>72</sup> do not apply to “to any transaction entered into to acquire or sustain aircraft” under the authority granted in the Defense Appropriations Act, 2002, establishing the Boeing Lease Program.<sup>73</sup>

## **Bilateral Economic Assistance**

### *Foreign Military Financing Program*

The Supplemental Appropriations Act provides an additional \$387 million, to remain available until 30 June 2003, for the Foreign Military Financing Program (FMFP)<sup>74</sup> for emergency expense activities related to combating international terrorism.<sup>75</sup> Of this amount, up to \$2 million is available to the DOD for “necessary expenses, including the purchase of passenger motor vehicles for use outside of the United States, for the general cost of administering military assistance and sales.”<sup>76</sup>

### *Peacekeeping Operations*

The Supplemental Appropriations Act appropriates an additional \$20 million, available until 30 June 2003, for peacekeeping operations for emergency expenses related to combating international terrorism. The additional funding is only available for such expenses in Afghanistan.<sup>77</sup>

## **Military Construction**

The Supplemental Appropriations Act allows the DOD to use funds it made available to carry out military construction projects

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68. Supplemental Appropriations Act § 301.

69. *Id.* § 305. Congress later amended this authority to apply to “fiscal years 2002 and 2003.” 2003 DOD Appropriations Act, Pub. L. No. 107-248, § 8145, 116 Stat. 1519, 1571 (2002).

70. Supplemental Appropriations Act § 305. Section 601(b) requires the Secretary of State to report to the Appropriations Committees that the newly elected President of Colombia has committed his government to establishing policies to combat illicit drug activities and respect for human rights, and to implementing budgetary and personnel reforms in the Colombian Armed Forces. *Id.* § 601.

71. *Id.* § 305.

72. Section 2533a requires the DOD to buy certain items from American sources. 10 U.S.C. § 2533a (2000).

73. Supplemental Appropriations Act § 308.

74. Through the FMFP, eligible countries receive grants to help purchase U.S. defense articles, services, or training through one of the Foreign Military Sales programs. *See* 22 U.S.C. §§ 2763-2754 (2000).

75. Supplemental Appropriations Act, tit. I, ch. 6 (Foreign Military Financing Program).

76. *Id.*; *see also* H.R. CONF. REP. NO. 107-593, at 150 (2002).

77. Supplemental Appropriations Act, tit. I, ch. 6 (Peacekeeping Operations).

not otherwise authorized by law.<sup>78</sup> Such construction projects need not be authorized via the normal military construction (MILCON) project procedures<sup>79</sup> if the SECDEF determines that the projects are designed to “respond to or protect against acts or threatened acts of terrorism.”<sup>80</sup> The SECDEF must notify Congress and wait fifteen days before obligating funds for such projects.<sup>81</sup>

## **BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003**

On 2 December 2002, the President signed the Bob Stump National Defense Authorization Act for FY 2003 (Authorization Act).<sup>82</sup>

### **Procurement**

#### *Sale of Articles and Services from Army Industrial Facilities*

Congress has extended the pilot program that authorizes the Army to sell manufactured articles and services from its industrial facilities—without regard to whether a commercial source of the article or service exists in the United States—through 30 September 2004. Participating Army facilities that sell manufactured articles and services for more than \$20 million must also transfer a percentage of the total amount from the Army Working Capital Fund for unused plant capacity to appropriations available during the following fiscal year, for demilitarization of conventional ammunition.<sup>83</sup>

#### *Multi-Year Procurement Authority*

Congress authorized the Army to enter into a multi-year contract for the procurement of vehicles under the Family of Medium Tactical Vehicles Programs, subject to submitting a certification that the contracts meet “all key performance parameters,” and that the total cost of using multi-year contracts is at least ten percent less than the cost of using successive one-year contracts.<sup>84</sup> The Authorization Act also extended the Navy’s authority to enter into multi-year contracts for the procurement of DDG-51 class destroyers.<sup>85</sup> It also authorized the Air Force to enter into a multi-year contract for the procurement of up to forty C-130J aircraft in the CC-130J configuration, and up to twenty-four C-130J aircraft in the KC-130J configuration. The appropriation is subject to qualification testing of the CC-130J for use in air assault operations, and installation of software upgrades in all existing C-130J and CC-130J aircraft in the Air Force’s inventory.<sup>86</sup>

#### *Boeing Lease Program*

Before entering into a lease for the acquisition of tanker aircraft under section 8159 of the 2002 DOD Appropriations Act,<sup>87</sup> the Authorization Act requires the Air Force to acquire the authorization and appropriation of needed funds or to submit a new start re-programming notification to the congressional defense committees in accordance with applicable reprogramming procedures.<sup>88</sup>

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78. *Id.* § 1001.

79. *See* 10 U.S.C. § 2802 (2000).

80. Supplemental Appropriations Act § 1001.

81. *Id.*

82. 2003 DOD Authorization Act, Pub. L. No. 107-314, 116 Stat. 2458 (2002). Representative Stump served as chair of the House Armed Services Committee during the 107th Congress. He has served in Congress since 1976. *Id.* § 1.

83. *Id.* § 111.

84. *Id.* § 113.

85. *Id.* § 121 (amending the National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 104-201, § 122(b), 110 Stat. 2446 (1996), as amended by the National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, § 122, 113 Stat. 534 (1999), and the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, § 122(a), 114 Stat. 1654A-24 (2000)).

86. *Id.* § 131.

87. Pub. L. No. 107-117, § 8159, 115 Stat. 2230, 2284 (2002).

## RDT&E Funds

### *Future Combat Systems Non-Line-of-Sight Cannon*

The Authorization Act directs the SECDEF to provide the Army a “self-propelled Future Combat Systems non-line-of-sight cannon indirect fire capability to equip the objective force” by FY 2008.<sup>89</sup> Congress further directs the SECDEF to submit a report on the proposed investments in non-line-of-sight indirect fire programs.<sup>90</sup>

### *Ballistic Missile Defense*

The 2002 Defense Authorization Act amended 10 U.S.C. § 224 to permit the SECDEF to transfer a program from the Ballistic Missile Defense Organization to one of the services, after properly notifying Congress and waiting at least sixty days.<sup>91</sup> The 2003 Authorization Act further amends section 224(e), concerning follow-on research, development, test, and evaluation. The SECDEF must ensure that for each such program transferred to one of the services, “responsibility for research, development, test, and evaluation related to system improvements for that program remains with the Director [of the Missile Defense Agency].”<sup>92</sup>

### *DOD Test Resource Management Center*

The Authorization Act establishes a DOD Test Resource Management Center (TRMC), a Field Activity headed by a director, who is a three-star officer. The TRMC is responsible for reviewing and certifying proposed DOD budgets for test and evaluation activities, developing and maintaining a strategic plan for DOD test and evaluation resources, and administering the Central Test and Evaluation Investment Program and the DOD program for testing and evaluation of science and technology.<sup>93</sup>

### *Technology Transition Initiative*

The Authorization Act directs the SECDEF to establish the Technology Transition Initiative to “facilitate the rapid transition” of new technologies from DOD science and technology programs into acquisition programs for such technologies.<sup>94</sup> In a related effort to accelerate the introduction of new and innovative technology into DOD acquisition programs,<sup>95</sup> Congress also directed the establishment of a Defense Acquisition Challenge Program. Under the program, DOD and non-DOD individuals and activities may propose alternatives, called “challenge proposals,” to existing DOD acquisition programs to improve the performance, affordability, manufacturability, or operation capability of the program. Proponents may submit the challenge proposals through the unsolicited proposal process or in response to a broad agency announcement.<sup>96</sup> The Authorization Act also establishes an outreach program for small businesses and non-traditional defense contractors to review and evaluate research activities and new technologies that have the potential for meeting DOD requirements for combating terrorism. As with the Challenge Program, individuals may submit proposals through the unsolicited proposal process or in response to a broad agency announcement.<sup>97</sup>

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88. 2003 DOD Authorization Act § 133.

89. *Id.* § 216.

90. *Id.* To deliver such a system by FY 2008, the conferees stated that “maximum advantage should be taken of technology developed through other programs, such as the composite armored vehicle, Crusader, and the joint United States-United Kingdom Future Scout and Calvary System.” H.R. CONF. REP. NO. 107-772, at 561 (2002). The conferees also shifted \$475.6 million in Crusader funding to the new project and authorized the distribution of an additional \$293 million in various related program elements. *Id.*

91. 2002 DOD Authorization Act, Pub. L. No. 107-107, § 231, 115 Stat. 1012, 1035 (2001).

92. 2003 DOD Authorization Act § 222. The Authorization Act also now references the change in name from the Ballistic Missile Defense Organization to the Missile Defense Agency. *Id.* § 225.

93. *Id.* § 231.

94. *Id.* § 242.

95. H.R. CONF. REP. NO. 107-772, at 571 (2002).

96. 2003 DOD Authorization Act § 243.

97. *Id.* § 244.

## O&M Funds

### *Funding Environmental Restoration Projects*

The Authorization Act requires the DOD to fund environmental restoration projects through the DOD's Environmental Restoration Accounts, not as Military Construction projects.<sup>98</sup>

### *Incidental Taking of Migratory Birds*

While the Migratory Bird Treaty Act generally prohibits the incidental takings of migratory birds,<sup>99</sup> the Authorization Act grants an interim exemption to military members participating in authorized military readiness activities. The exemption applies until the Department of Interior establishes regulations authorizing incidental takings by members of the Armed Forces during military readiness activities.<sup>100</sup>

### *Use of Commissary and MWR Facilities by National Guard Members*

The Authorization Act amends 10 U.S.C. § 1063a to provide an additional basis to authorize National Guard members to use commissaries and MWR retail facilities while serving during a "national emergency."<sup>101</sup>

### *Uniform Funding and Management of MWR Programs*

The Authorization Act amends Chapter 147 of Title 10 to authorize the SECDEF to establish a Uniform Funding and Management program and to treat and expend appropriated funds under rules applicable to nonappropriated funds when those funds are used for morale, welfare, and recreation (MWR) programs. The DOD may use appropriated funds for such MWR programs only if such programs are authorized to receive appropriated fund support, and only in authorized amounts.<sup>102</sup>

### *Competitive Sourcing Notification Requirements*

The Authorization Act amends 10 U.S.C. § 2461 to require the SECDEF to notify Congress of the outcome of a competitive sourcing study, regardless of whether the study recommends converting to contractor performance or retaining the function in-house.<sup>103</sup>

### *Contractor Performance of Security Guard Functions*

Under 10 U.S.C. § 2465, the DOD generally may not enter into contracts for security guard or firefighting services on installations within the United States, unless a contractor already performed such services on or before 24 September 1983.<sup>104</sup> The Authorization Act grants the SECDEF and the service secretaries temporary authority to enter into contracts for any "increased performance" of security guard functions at military facilities in response to the 11 September 2001 terrorist attacks, and to waive the prohibition under 10 U.S.C. § 2465. This three-year authority applies when: (1) without the contract, military members would perform the increased security functions; (2) the service secretary determines that the contractor personnel are appropriately trained

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98. *Id.* § 313.

99. 16 U.S.C. § 703 (2000).

100. 2003 DOD Authorization Act § 315.

101. *Id.* § 322 (amending 10 U.S.C. § 1063a (2000)).

102. *Id.* § 323.

103. *Id.* § 331.

104. 10 U.S.C. § 2465. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 granted the DOD a temporary exception to the prohibition against procuring security services. The exception applies for the duration of Operation Enduring Freedom and 180 days thereafter, and requires the DOD to contract with proximately located state or local governments to procure such security services. Pub. L. No. 107-56, § 1010, 115 Stat. 272, 395-96.

and supervised; and (3) contract performance would not result in a reduction in security.<sup>105</sup>

### *Educational Agencies Affected by Military Housing Privatization*

Under the Elementary and Secondary Act of 1965, school districts near military installations are eligible for federal assistance, depending on the number of DOD dependents who reside on the installation and attend school in the local district.<sup>106</sup> The Authorization Act amends 20 U.S.C. § 7703(b)(2), providing that heavily impacted local school districts that received financial support during the previous fiscal year, but which became ineligible for such payments because of the conversion of military housing units to private housing, are still eligible for payments while the DOD is privatizing the housing units.<sup>107</sup>

## **Military Personnel Authorizations**

### *Expanded Authority to Increase Active Duty End Strengths*

Although congressional conferees believe that “active duty end strengths should be increased substantially,” the conferees were unable to increase active duty authorizations “due to insufficient additional appropriations.”<sup>108</sup> Congress amended 10 U.S.C. § 115, however, and granted the SECDEF expanded authority to increase active duty end strength by up to three percent. The Authorization Act also provides the service secretaries the authority to increase the services’ active duty end strength by up to two percent.<sup>109</sup> “In recognition of the conferees’ strong view that active duty end strength should not be reduced any further,”<sup>110</sup> the Authorization Act also eliminates the SECDEF’s authority to reduce end strength numbers below authorized levels.<sup>111</sup>

## **Military Personnel Policy**

### *Use of Reserves to Defend Against Terrorism*

The Authorization Act amends 10 U.S.C. § 12304 and 10 U.S.C. § 12310 to authorize the use of Reserves to protect against “a terrorist attack in the United States that results, or could result, in a catastrophic loss of life or property.”<sup>112</sup>

### *Wear of Abayas by Female Military Members*

The Authorization Act prohibits commanders from ordering or encouraging subordinates to wear the *abaya* garment<sup>113</sup> while the member is serving in Saudi Arabia. It also prohibits the use of appropriated funds to acquire *abayas* for issuance to military members or contract personnel accompanying the armed forces in Saudi Arabia.<sup>114</sup>

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105. 2003 DOD Authorization Act § 332.

106. 20 U.S.C. § 7703 (2000).

107. 2003 DOD Authorization Act § 344.

108. H.R. CONF. REP. NO. 107-772, at 634-35 (2002).

109. 2003 DOD Authorization Act § 403.

110. H.R. CONF. REP. NO. 107-772, at 635 (2002).

111. 2003 DOD Authorization Act § 402 (repealing 10 U.S.C. § 691(e) (2000)).

112. *Id.* § 514.

113. Ed Williams, *Lt. Col. McSally Deserves the Saudis’ Respect; It’s Outrageous to Order a Combat Pilot to Dress as a Muslim Woman*, CHARLOTTE OBSERVER, May 19, 2002, at 3D. An *abaya* is a full-body garment with an accompanying scarf. *Id.*

114. 2003 DOD Authorization Act § 563.



The SECDEF must study the desirability and feasibility of consolidating the separate Army, Navy, and Air Force basic instruction courses for new judge advocates into a single course at a single location. The resulting report was due to the congressional armed services committees no later than 1 February 2003.<sup>115</sup>

## **Compensation and Other Personnel Benefits**

### *Basic Pay Increases*

Effective 1 January 2003, all members of the uniformed services will receive a 4.1% increase in their monthly base pay, with mid-grade and senior noncommissioned officers and mid-grade officers receiving pay raises of up to 6.5% in targeted increases.<sup>116</sup>

### *Special Compensation for Disabled Retirees*

Facing the possibility of a presidential veto over the issue of “concurrent receipt,”<sup>117</sup> the conferees reached a compromise<sup>118</sup> and authorized special compensation for certain disabled veterans. The Authorization Act authorizes payments to military retirees with a “qualifying combat-related disability.”<sup>119</sup> A “qualifying combat-related disability” is any disability rated at ten or more percent, for which the member received the Purple Heart or a combat injury rated at sixty percent or higher.<sup>120</sup>

## **Health Care Provisions**

### *Changes to TRICARE Prime Remote*

The Authorization Act authorizes TRICARE Prime Remote benefits<sup>121</sup> for eligible dependents when the sponsoring military member is reassigned to an unaccompanied permanent duty station.<sup>122</sup> The Authorization Act also extends TRICARE Prime Remote benefits to dependents of Reservists ordered to active duty in remote locations for more than thirty days.

## **Acquisition Policy, Acquisition Management, and Related Matters**

### *Buy-to-Budget of End Items*

The Authorization Act adds 10 U.S.C. § 2308, granting the DOD the authority to acquire a greater quantity of an end item than that specified in an authorization or appropriations law, if the agency determines that acquisition of the greater quantity is possible without additional funding. Prior congressional notification is not required; however, the agency must notify the congressional defense committees within thirty days of the agency’s decision.<sup>123</sup>

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115. *Id.* § 582.

116. *See id.* § 601.

117. Vernon Loeb, *Bush Threatens Veto of Defense Bill; President Wants Costly New Disabled Military Pension Benefits Eliminated*, WASH. POST, Oct. 7, 2002, at A2. The “concurrent receipt” provision would have permitted military retirees to receive both military retirement benefits and Department of Veterans’ Affairs (VA) disability benefits at the same time. *Id.* Under current law, the government reduces a retiree’s military pension benefits by the amount of VA disability benefits the retiree receives. *Id.*; *see also* 38 U.S.C. §§ 5304-5305 (2000).

118. H.R. CONF. REP. NO. 107-772, at 657-58 (2002). While the Senate bill provided for the repeal of the prohibition against concurrent receipt, the House version phased in a repeal of the provision for those veterans with a disability rating of sixty percent or higher over five years. *Id.*

119. 2003 DOD Authorization Act § 636.

120. *Id.*

121. Current law provides TRICARE Prime Remote benefits to dependents who reside with their military sponsors at assigned remote locations (i.e., more than fifty miles, or about one hour driving time, from the nearest military medical treatment facility). 10 U.S.C. 1079(p) (2000). If the military member is later reassigned and dependents are not authorized to accompany the member to the new duty assignment, the dependents are no longer eligible for these benefits. *See id.*

122. 2003 DOD Authorization Act § 702.OD

### *“Spiral Development” Authorization*

The Authorization Act grants the SECDEF permanent authorization to conduct major defense acquisition programs as “spiral development programs.”<sup>124</sup> Establishing minimum requirements for spiral development plans, the Authorization Act requires the SECDEF to issue implementation guidance within 120 days of enactment.<sup>125</sup> It also requires the SECDEF to report to the congressional committees on the approach the DOD intends to take in applying certain legislative and regulatory requirements to major defense acquisition programs that use the “evolutionary acquisition process.”<sup>126</sup>

### *Performance Goals for Procuring Services*

Last year, to improve the management of DOD services contracts, Congress set savings goals for DOD services contracts over the next ten fiscal years.<sup>127</sup> Because the DOD was unable to develop a method for measuring savings from improved management techniques, Congress repealed last year’s goals and established new goals for competition and performance-based contracting under multiple award contracts (MACs).<sup>128</sup> The Authorization Act establishes goals for the competitive purchase of services under MACs of forty percent for FY 2003, fifty percent for FY 2004, and seventy-five percent by FY 2005. The Authorization Act also sets new goals for performance-based purchases of services under MACs of twenty-five percent in FY 2003, thirty-five percent in FY 2004, fifty percent in FY 2005, and seventy percent in FY 2011. The SECDEF may adjust any of the percentage goals if he determines in writing that the goal is “too high and cannot reasonably be achieved.”<sup>129</sup>

### *Rapid Acquisition and Deployment Procedures*

Within 180 days of the Authorization Act’s enactment, the SECDEF must develop procedures for the rapid acquisition and deployment of items that unified combatant commanders urgently need. The procedures must address streamlined communication of needs and proposed items between the Joint Chiefs of Staff, the acquisition community, and the research and development community.<sup>130</sup> In a separate provision also concerned with expediting procurements, the Authorization Act requires the Undersecretary of Defense for Acquisition, Technology, and Logistics to establish a “quick-reaction special projects acquisition team” to examine and advise the Undersecretary on actions that the service can take to expedite the acquisition of urgently needed systems.<sup>131</sup>

### *Limitation Period for Task and Delivery Order Contracts*

The Authorization Act extends the application of the multi-year contract provisions of 10 U.S.C. § 2306c, “including the authority to enter into contracts for periods of not more than five years,” applicable to task and delivery order contracts.<sup>132</sup> Implementing regulations will establish a preference for meeting such multi-year requirements with separate awards to two or more sources to the maximum extent practicable.<sup>133</sup>

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123. *Id.* § 801.

124. *Id.* § 803. The Authorization Act defines “spiral development program” as a research and development program “conducted in discrete phases or blocks, each of which will result in the development of fieldable prototypes; and will not proceed into acquisition until specific performance parameters . . . have been met.” *Id.*

125. *Id.*

126. *Id.* § 802. The Authorization Act defines “evolutionary acquisition process” as a “process by which an acquisition program is conducted through discrete phases or blocks, with each phase or block consisting of the planned definition, development, production or acquisition, and fielding of hardware or software that provides operationally useful capability.” *Id.*

127. 2002 DOD Authorization Act, Pub. L. No. 107-107, § 802, 115 Stat. 1012, 1178 (2001). By FY 2001, the DOD was to achieve a ten-percent reduction in expenditures from FY 2000, beginning with a three-percent reduction during FY 2002. *Id.*

128. H.R. CONF. REP. NO. 107-772, at 669 (2002).

129. 2003 DOD Authorization Act § 805.

130. *Id.* § 806.

131. *Id.* § 807.

132. *Id.* § 811.

133. *Id.*

### *Extension of Test Program for Commercial Items*

Congress extended the test program authorizing the use of simplified acquisition procedures to acquire certain commercial items; the program is now set to expire on 1 January 2004.<sup>134</sup> The Authorization Act also requires the Comptroller General to submit a report on the use, benefits, and impact of the test program to Congress by 15 March 2003.<sup>135</sup>

### *Extension of Contract Goal for Small Disadvantaged Businesses*

In 1986, Congress set a goal of five-percent participation in DOD contracts by small disadvantaged businesses and minority institutions of higher education.<sup>136</sup> The Authorization Act extends this goal through FY 2006.<sup>137</sup>

### *Contracting with Federal Prison Industries—Additional Clarification*

A federal agency must generally purchase products made by the Federal Prison Industries (FPI) if those products meet the agency's requirements, are timely, available, and no more expensive than current market prices.<sup>138</sup> Last year, Congress enacted 10 U.S.C. § 2410n, which establishes prerequisites before the FPI preference will apply to future DOD purchases. These include the need to conduct market research to determine whether an FPI product is comparable to similar private sector products in price, quality, and timeliness, and if not, to use competitive procedures to purchase the item.<sup>139</sup>

The Authorization Act clarifies and adds to the procedural requirements for contracting with FPI. Under the amended language, if the DOD determines that an FPI product is not comparable in price, quality, or (no longer "and") time of delivery, the DOD must use competitive procedures to purchase the product or make a purchase under a MAC.<sup>140</sup> To emphasize that it is the contracting officer's sole discretion whether the FPI product or service is comparable to that offered in the private sector,<sup>141</sup> the Authorization Act provides that such a determination is not subject to the arbitration procedure under 18 U.S.C. § 4124(b).<sup>142</sup> Congress also added language specifying that the government may not require contractors and potential contractors to use FPI as a subcontractor for performance of the DOD contract. The Authorization Act also prohibits the DOD from entering into a contract with FPI that could give an inmate worker access to classified data or other security, personal, or financial information.<sup>143</sup>

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134. *Id.* § 812; *see also* GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. subpt. 13.5 (July 2001) [hereinafter FAR] (describing the implementation of this program).

135. 2003 DOD Authorization Act § 812.

136. National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 99-661, § 1207, 100 Stat. 3816, 3973 (1996) (codified as amended at 10 U.S.C. § 2323). The participation goal is also applicable to Coast Guard and National Aeronautics and Space Administration contracts. *Id.* For additional guidance and procedures related to setting such goals, *see* FAR, *supra* note 134, pt. 19.

137. 2003 DOD Authorization Act § 816.

138. *See* 18 U.S.C. § 4124 (2000). The FAR provisions implementing this statutory preference, however, do not track the statute. *See* FAR, *supra* note 134, subpt. 8.6. More specifically, the FAR requires agencies to obtain a "clearance" or waiver from the FPI before making an outside purchase, and indicates that FPI would not normally issue clearances merely because other sources could provide the supply at a lower price. *Id.* at 8.605.

139. 2002 DOD Authorization Act, Pub. L. No. 107-107, § 811, 115 Stat. 1012, 1180-81 (2001). For interim implementing regulations within the DOD, *see* Competition Requirements for Purchases from a Required Source, 67 Fed. Reg. 20,687 (Apr. 26, 2002) (to be codified at 48 C.F.R. pts. 208, 210) (amending U.S. DEP'T OF DEFENSE, FEDERAL ACQUISITION REG. SUPP. 208.602, .606, 210.001 (July 2002)) [hereinafter DFARS].

140. 2003 DOD Authorization Act § 819. To satisfy this section's competition requirement, purchases under existing MACs must follow the competition requirements under section 803 of the 2002 DOD Authorization Act; *see* H.R. CONF. REP. NO. 107-772, at 672 (2002). For proposed guidance on the competition requirements under MACs, *see* Competition Requirements for Purchase of Services Under Multiple Award Contracts, 67 Fed. Reg. 15,351 (Apr. 1, 2002) (to be codified at 48 C.F.R. pts. 208, 216) (amending DFARS, *supra* note 139, at 208.216)).

141. *See* H.R. CONF. REP. NO. 107-772, at 672 (2002).

142. 2003 DOD Authorization Act § 819. Under 18 U.S.C. § 4124, a board consisting of the Attorney General, the Administrator of General Services, and the President, or their representatives arbitrates disputes about the price, quality, character, or suitability of FPI products. 18 U.S.C. § 4124 (2000); *see also* Federal Prison Industries, Inc., B-290546, 2002 U.S. Comp. Gen. LEXIS 101 (July 15, 2002) (finding that 10 U.S.C. § 2410a made no express changes to the arbitration board's authority with regard to DOD purchases, thus determining that the authority to resolve disputes between DOD agencies and FPI remained intact).

143. 2003 DOD Authorization Act § 819.

### *Revision to Multi-Year Contracting Authority*

The Authorization Act amends 10 U.S.C. § 2306b(i) to clarify that the DOD may obligate funds for the procurement of an end item under a multi-year contract only for “a complete and useable end item.”<sup>144</sup> Where otherwise authorized by law, the Authorization Act also permits the DOD to purchase economic order quantities of long-lead items necessary to meet a planned delivery schedule for complete major end items.<sup>145</sup>

### *Intellectual Property Arrangements*

Apparently concerned with the DOD’s ability to negotiate intellectual property arrangements properly, Congress has tasked the SECDEF to evaluate the training, knowledge, and resources the DOD needs to negotiate intellectual property rights effectively, and to report the results to Congress by 1 February 2003.<sup>146</sup>

### *Intra-Governmental Acquisitions Assessment*

The Authorization Act also requires the SECDEF to assess DOD purchases of products and services through contracts with other federal departments and agencies. This report is also due to Congress by 1 February 2003; the report must address the total amount of fees the DOD paid for such acquisitions, assess whether such fees were excessive, and describe the benefits the DOD received from the use of such contracts.<sup>147</sup>

### *Multi-Year Procurement Authority for Environmental Services*

The Authorization Act amends 10 U.S.C. § 2306c by adding “environmental remediation services” at military installations and former DOD sites to the list of “covered services” for which the DOD may enter into multi-year contracts.<sup>148</sup>

### *Effects of the New Army Contracting Agency*

The Army must submit a report on the effects of its newly established Army Contracting Agency (ACA).<sup>149</sup> The report must include the Army’s justification for creating the ACA, the impact on small business participation in contracts, and a description of the Army’s plans to address any negative effects on small business participation.<sup>150</sup>

## **DOD Organization and Management**

### *Duties Relating to Homeland Defense and Combating Terrorism*

Section 902 of the Authorization Act establishes the new position of Assistant Secretary of Defense for Homeland Security and entrusts this new position with supervision of the DOD’s homeland defense activities. The Authorization Act also transfers responsibility for the overall direction for policy, program planning and execution, and allocation of resources for the DOD’s activities in combating terrorism to the Undersecretary of Defense for Policy.<sup>151</sup>

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144. *Id.* § 820.

145. *Id.*

146. *Id.* § 821.

147. *Id.* § 824.

148. *Id.* § 827. Department of Defense agencies may enter into contracts for periods of not more than five years for certain “covered services” and supply items related to such services. 10 U.S.C. § 2306c (2000).

149. 2003 DOD Authorization Act § 828. The ACA, activated 1 October 2002, centralizes most of the Army’s installation contracting activities under a single headquarters, as part of the Army’s effort to streamline its business operations. Ann Roosevelt, *Army Streamlines Contracting, Installation Management*, DEFENSE WEEK, Oct. 7, 2002.

150. 2003 DOD Authorization Act § 828.

The Authorization Act requires the SECDEF to provide oversight of space defense programs through appropriate organizations within the Office of Secretary of Defense (OSD), and to submit a detailed plan for OSD oversight of these programs to the appropriate congressional committees.<sup>152</sup> This provision reflects congressional recognition of the DOD's plans to change the oversight procedures of space programs to reduce decision cycle times, as well as the inherently joint nature of space defense programs.<sup>153</sup>

### **General Provisions**

#### *Authorization of Supplemental Appropriations, 2002*

The Authorization Act authorizes the supplemental DOD appropriations that Congress provided in the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States. The Authorization Act also requires the SECDEF to report on all DOD transfers from the Defense Emergency Response Fund and other transfer accounts during FY 2002.<sup>154</sup>

#### *Liability of Accountable Officers*

In 1998, the DOD authorized the designation of persons providing information or data on which certifying officials would rely in the certification of payment vouchers as "accountable officers." The regulation also held such "accountable officers" financially liable for erroneous payments resulting from the negligent performance of their duties.<sup>155</sup> The General Accounting Office (GAO), however, found no statutory authority that would permit such an action. In an advance decision in 2000, the GAO determined that the regulation's liability provision was unenforceable.<sup>156</sup> The Authorization Act provides the DOD with such authority in a new 10 U.S.C. § 2773a, which states that the government may hold "departmental accountable officials" financially liable for illegal or erroneous payments resulting from their negligence.<sup>157</sup>

#### *Uniform DOD Standards for Reports of Survey*

The Authorization Act extends the Army and Air Force report of survey procedures to Navy, Marine Corps, and DOD civilian employees in a new 10 U.S.C. § 2787, which grants all armed forces officers and designated DOD civilian employees the authority to act on reports of survey in accordance with the implementing regulations required under the Authorization Act.<sup>158</sup>

#### *Government Purchase Card Management*

In response to reported abuses of the government purchase card within the DOD, Congress amended and added several new provisions to 10 U.S.C. § 2784, in an effort to improve the management of the purchase card program. In addition to requiring periodic audits and appropriate training for cardholders and overseers, the Authorization Act states that the DOD must periodically review whether each cardholder has a need for the purchase card, develop specific policies regarding the number of cards issued, and provide for administrative and criminal penalties for violations of the rules.<sup>159</sup>

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151. *Id.* § 902.

152. *Id.* § 911.

153. H.R. CONF. REP. NO. 107-772, at 677-78 (2002).

154. 2003 DOD Authorization Act § 1002.

155. U.S. DEP'T OF DEFENSE, DIR. 7000.14-R, DOD FINANCIAL MANAGEMENT REGULATION vol. 5, ch. 33, para. 330505 (Aug. 1998).

156. Department of Defense—Authority to Impose Pecuniary Liability by Regulation, B-280764, 2000 U.S. Comp. Gen. LEXIS 159 (May 4, 2000).

157. 2003 DOD Authorization Act § 1005. The Authorization Act defines a "departmental accountable official" as an individual, designated in writing, who is responsible for providing DOD officials with "information, data, or services that are directly relied upon by the certifying official in the certification of vouchers for payment." *Id.*

158. *Id.* § 1006.

### *Government Travel Card Management*

The Authorization Act also adds a new 10 U.S.C. § 2784a to address problems with the government travel card. This section authorizes the SECDEF to require DOD members to cover their travel expenses through direct payment to the issuing bank. The Authorization Act also allows the DOD to deduct and withhold up to fifteen percent of a member's basic pay for any delinquent amount the member owes for charges of official travel expenses. The DOD may similarly deduct and withhold such debts from the retirement pay of former DOD members.<sup>160</sup>

### *Clearance of Misrecorded Transactions*

The Authorization Act authorizes the DOD to cancel certain long-standing debit and credit transactions that the DOD cannot otherwise clear from its accounts because of misrecording to the wrong appropriation. This authority exists for two years after the Authorization Act's effective date.<sup>161</sup> To ensure oversight, the conferees directed the Comptroller General to review and report on the DOD's use of this authority.<sup>162</sup>

### *Law Enforcement Use of DOD-Maintained DNA Samples*

The DOD must now release DNA samples under the terms of a valid order of a federal or military judge. Such an order must be for "investigation or prosecution of a felony, or any sexual offense, for which no other source of DNA information is reasonably available."<sup>163</sup>

### *Authority to Obtain Foreign Language Services*

Section 1064 of the Authorization Act authorizes the SECDEF to establish a National Foreign Language Skills Registry of persons proficient in a critical foreign language and willing to provide linguistic services to the United States during a war or national emergency.<sup>164</sup> The Authorization Act also amends 10 U.S.C. § 1588<sup>165</sup> to authorize the acceptance of such voluntary translation and interpretation services.<sup>166</sup>

### *Rewards for Assistance in Combating Terrorism*

Congress has amended 10 U.S.C. § 127b, adding a new section authorizing the SECDEF to provide monetary or in-kind rewards to individuals who provide U.S. personnel with information or nonlethal assistance. The assistance must benefit an activity of the armed forces outside the United States, conducted against international terrorism or for protection of the armed forces. The amount of the reward may not exceed \$200,000. Service secretaries may delegate the authority for such rewards for up to \$50,000 to combatant commanders. Combatant commanders may further delegate this authority for up to \$2500.<sup>167</sup>

### *Space and Services to Military Welfare Societies*

The Authorization Act authorizes the service secretaries to provide space and services to military welfare societies without

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159. *Id.* § 1007.

160. *Id.* § 1008.

161. *Id.* § 1009.

162. H.R. CONF. REP. NO. 107-772, at 686-87 (2002).

163. 2003 DOD Authorization Act § 1063.

164. *Id.* § 1064.

165. The service secretaries may accept certain voluntary services, notwithstanding the Anti-Deficiency Act's general prohibition. *See* 10 U.S.C. § 1588 (2000); 31 U.S.C. § 1342 (2000).

166. 2003 DOD Authorization Act § 1064.

167. *Id.* § 1065.

charge. A “military welfare society” includes only the Army Relief Society, the Navy-Marine Corps Relief Society, and the Air Force Aid Society.<sup>168</sup>

## **Matters Relating to Other Nations**

### *Administrative Services and Support for Coalition Liaison Officers*

The Authorization Act adds a new 10 U.S.C. § 1051a, allowing the DOD to provide administrative services and support to foreign liaison officers performing duties in connection with coalition operations. The DOD may also pay the travel, subsistence, and personal expenses directly necessary for a liaison officer from a developing country to carry out his duties.<sup>169</sup>

### *Travel of Partnership for Peace Program Participants*

The Authorization Act amends 10 U.S.C. § 1051(b) to authorize the DOD to pay the travel expenses of foreign defense personnel participating in the North Atlantic Treaty Organization’s (NATO) Partnership for Peace Program (PFP) between the participant country and the NATO country.<sup>170</sup>

## **Homeland Security**

### *Transfer of Technology Items and Equipment*

To support homeland security, the Authorization Act requires the SECDEF to designate a senior DOD official to coordinate DOD efforts to “identify, evaluate, deploy, and transfer” technology items and equipment that may enhance public safety and improve homeland security, to federal, state, and local first responders.<sup>171</sup> The Authorization Act also requires the SECDEF to submit a report on the DOD’s “responsibilities, mission, and plans for military support of homeland security” to the congressional defense committees.<sup>172</sup>

## **Authorization of Appropriations for the War on Terrorism**

The Authorization Act also gives the DOD a \$10 billion appropriation for FY 2003 for the conduct of Operation Noble Eagle and Operation Enduring Freedom.<sup>173</sup> Before the DOD transfers such funds to the normal budget accounts, it must give the congressional defense committees prior notice and wait fifteen days.<sup>174</sup>

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168. *Id.* § 1066. The term “services” includes “lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone and other information technology services (including installation of lines and equipment, connectivity, and other associated services), and security systems (including installation and other associated expenses).” *Id.*

169. *Id.* § 1201. The Authorization Act defines “administrative services and support” as “base or installation support services, office space, utilities, copying services, fire and police protection, and computer support.” *Id.*

170. *Id.* § 1202.

171. *Id.* § 1401.

172. *Id.* § 1404.

173. *Id.* § 1501. The Authorization Act further specifies that of the \$10 billion authorized, only \$2.55 billion is available for transfer to FY 2003 military personnel accounts; only \$4.27 billion is available for transfer to FY 2003 O&M accounts and working capital funds; only \$1 billion is available for transfer to FY 2003 procurement and RDT&E accounts; only \$1.98 billion is available by transfer for unspecified intelligence and classified activities; and only \$200 million is available by transfer for the procurement of ammunitions. *Id.* §§ 1502-1506.

174. *Id.* § 1508.

## Military Construction General Provisions

### *Services for Housing Privatization Projects*

Under 10 U.S.C. § 2872a, the service secretaries may now furnish certain covered utilities and services to housing privatization projects on a reimbursement basis.<sup>175</sup> The Authorization Act amends this section by adding firefighting and fire protection services, as well as police protection services, to the list of services that the secretaries may now provide.<sup>176</sup>

### *Pilot Housing Privatization Authority for Unaccompanied Housing*

In 1996, Congress granted the DOD additional authority to acquire military housing by non-traditional means, including the use of loan and rental guarantees, the conveyance of existing housing and facilities, and differential lease payments.<sup>177</sup> The Authorization Act authorizes the Navy to conduct up to three pilot projects using the private sector to acquire or construct military unaccompanied housing in the United States. The Navy's authority for such projects expires on 30 September 2007.<sup>178</sup>

## MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2003

President Bush signed the Military Construction Appropriations Act, 2003 (MCAA), on 23 October 2002.<sup>179</sup> The MCAA appropriated nearly \$10.5 billion for military construction, family housing, and base closure activities.<sup>180</sup> This amount is a minimal decrease, about \$100,000, from FY 2002, but the amount is about \$835 million more than the administration requested.<sup>181</sup> These appropriations include nearly \$112 million for unspecified minor military construction projects, an increase of about \$12 million over last year, and \$10 million for contingency construction.<sup>182</sup>

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175. 10 U.S.C.S. § 2872a (LEXIS 2003).

176. 2003 DOD Authorization Act § 2802.

177. See National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, § 2801(a)(1), 110 Stat. 186, 547 (1996) (amending Title 10 to add subchapter IV to chapter 169).

178. 2003 DOD Authorization Act § 2803.

179. Military Construction Appropriations Act for Fiscal Year 2003, Pub. L. No. 107-249, 116 Stat. 1578 (2002) [hereinafter Military Construction Appropriations Act, 2003].

180. H.R. REP. NO. 107-731, at 49 (2002). The MCAA breaks the appropriations down as follows:

Military Construction, Army—\$1,683,710,000;  
Military Construction, Navy—\$1,305,128,000;  
Military Construction, Air Force—\$1,080,247,000;  
Military Construction, Defense-Wide—\$874,645,000;  
Military Construction, Army National Guard—\$241,377,000;  
Military Construction, Air National Guard—\$203,813,000;  
Military Construction, Army Reserve—\$100,554,000;  
Military Construction, Naval Reserve—\$74,921,000;  
Military Construction, Air Force Reserve—\$67,226,000;  
NATO Security Investment Program—\$167,200,000;  
Family Housing Construction, Army—\$280,356,000;  
Family Housing Operation and Maintenance, Army—\$1,106,007,000;  
Family Housing Construction, Navy and Marine Corps—\$376,468,000;  
Family Housing Operation and Maintenance, Navy and Marine Corps—\$861,788,000;  
Family Housing Construction, Air Force—\$684,824,000;  
Family Housing Operation and Maintenance, Air Force—\$863,050,000;  
Family Housing Construction, Defense-Wide—\$5,480,000;  
Family Housing Operation and Maintenance, Defense-Wide—\$42,395,000;  
DOD Family Housing Improvement Fund—\$2,000,000;  
Base Realignment and Closure Account—\$561,138,000.

Military Construction Appropriations Act, 2003, 116 Stat. at 1578-82. The sum total of these appropriations is \$10,582,327,000, but Congress also rescinded a total of \$83,327,000, leaving a net amount of \$10,499,000,000 in new obligation authority. *Id.*

181. H.R. REP. NO. 107-246, at 49.



## NAVY-MARINE CORPS INTRANET

In 2001, as part of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Congress imposed several restrictions on the Navy's ability to implement its purchase of intranet work stations.<sup>183</sup> Last year, Congress again provided guidance and requirements in the National Defense Authorization Act for Fiscal Year 2002, permitting the Navy to contract for additional work stations conditioned upon appropriate approval within the DOD and the successful operation of the work stations on the intranet.<sup>184</sup> Last year's MCAA also required the Navy to submit a report to Congress on the status of testing and implementation of the intranet.<sup>184</sup> This year, Congress addressed the Navy-Marine Corps Intranet in a separate legislative act that authorizes the Navy to extend the term of its intranet contract for up to seven years, notwithstanding the general five-year limitation provided in 10 U.S.C. § 2306c.<sup>185</sup>

## IMPROPER PAYMENTS INFORMATION ACT OF 2002

On 26 November 2002, the President signed the Improper Payments Information Act of 2002 (IPIA).<sup>186</sup> The IPIA requires executive agency heads to review all programs and activities within their jurisdiction annually, and identify those programs and activities that may be susceptible to significant improper payments. For each identified program and activity, the agency head must estimate the annual amount of improper payments and provide the estimate to Congress before March 31 of the following year. If the estimate exceeds \$10 million, the agency head must also provide a report on the agency's actions to reduce the improper payments.<sup>187</sup>

## THE SECURITY ASSISTANCE ACT OF 2002<sup>188</sup>

On 30 September 2002, the President signed the Security Assistance Act of 2002 (SAA), as division B of the Foreign Relations Authorization Act for Fiscal Year 2003. The next section discusses a few of the provisions of the SAA that significantly impact the security assistance programs of the Department of State and the DOD.

### *Foreign Military Sales and Financing Authorities*

In FY 2003, the SAA authorizes about \$4.1 billion for grant assistance under section 23 of the Arms Export Control Act,<sup>189</sup> an increase of about \$500 million from FY 2002.<sup>190</sup>

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182. The conference report accompanying the MCAA provides the following amounts for unspecified minor military construction:

Unspecified Minor Construction, Army—\$26,975,000;  
Unspecified Minor Construction, Navy—\$26,187,000;  
Unspecified Minor Construction, Air Force—\$12,620,000;  
Unspecified Minor Construction, Defense-Wide—\$16,293,000;  
Unspecified Minor Construction, Army National Guard—\$13,985,000;  
Unspecified Minor Construction, Air National Guard—\$5,900,000;  
Unspecified Minor Construction, Army Reserve—\$2,850,000;  
Unspecified Minor Construction, Navy Reserve—\$780,000;  
Unspecified Minor Construction, Air Force Reserve—\$5,996,000.

*Id.* at 44-45.

183. See Pub. L. No. 106-398, § 814, 114 Stat. 1654, 1654A-215 (2000).

184. See Pub. L. No. 107-107, § 362, 115 Stat. 1012, 1065 (2001).

185. Pub. L. No. 107-254, 116 Stat. 1733 (2002).

186. Pub. L. No. 107-300, 116 Stat. 2350 (2002).

187. *Id.* § 2.

188. FRAA, Pub. L. No. 107-228, div. B, 116 Stat. 1350, 1425 (2002).

189. *Id.* § 1201. Under the Arms Export Control Act, these funds assist designated countries through grants and loan subsidies. See 22 U.S.C. § 2763 (2000). For designation of foreign governments receiving such assistance, see Security Assistance Act, 2002, §§ 1221-1224.

190. See Security Assistance Act of 2000, Pub. L. No. 106-280, § 101, 114 Stat. 845, 846.

Congress authorized \$85 million for FY 2003 to fund the International Military Education and Training (IMET) program,<sup>191</sup> up from \$65 million in FY 2002.<sup>192</sup> The IPIA also amends Foreign Assistance Act (FAA)<sup>193</sup> provisions related to the IMET program, adding a new requirement for the Secretary of State to report human rights violations by foreign participants in the IMET program to Congress.<sup>194</sup> The FAA requires the SECDEF to maintain and appropriately update the database of foreign participants to reflect any such finding.<sup>195</sup>

*Excess Defense Article and Drawdown Authorities*

The IPIA grants an exception to the FAA's general prohibition against using DOD funds to pay for transportation and related costs of transferring excess defense articles.<sup>196</sup> During FY 2003, this exception permits the DOD to use available funds for "crating, packing, handling, and transportation" expenses related to the transfer of excess defense articles to certain countries.<sup>197</sup> The IPIA also amends the FAA to include the Philippines on the "priority list" of countries to receive such excess transfers.<sup>198</sup>

**HOMELAND SECURITY ACT OF 2002**

On 25 November 2002, President Bush signed the Homeland Security Act of 2002 (HSA). This historic legislation began a massive reorganization of the federal government and created a new Department of Homeland Security (DHS), headed by the Secretary of Homeland Security (SHS).<sup>199</sup> Although the extent of the HSA's impact on the field of government contract and fiscal law is uncertain, the next section discusses a few notable provisions related to acquisitions and the DOD.

*Acquisitions*

The HSA gives the DHS non-FAR, "other transaction" contracting authority for research and development projects<sup>200</sup> under a five-year pilot program similar to that which Congress has already authorized for the DOD.<sup>201</sup> The HSA also grants the SHS the authority to procure temporary personal service contracts for experts and consultants.<sup>202</sup>

The HSA also gives the SHS special streamlined acquisition authority through 30 September 2007.<sup>203</sup> Under this authority, the SHS may increase the micro-purchase threshold to \$7500 for certain DHS employees.<sup>204</sup> The SHS may also increase the simplified

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191. Security Assistance Act, 2002, § 1211.

192. Security Assistance Act, 2000, § 201.

193. See 22 U.S.C.S. § 2347 (LEXIS 2003).

194. Security Assistance Act, 2002, § 1212.

195. *Id.*; see 22 U.S.C.S. § 2347. The Security Assistance Act of 2000 required the SECDEF to create and maintain a database containing detailed information on IMET participants, to include training received, and to the extent practicable, the participants' career progressions after the training. Security Assistance Act, 2000, § 202.

196. See 22 U.S.C.S. 2321j(e).

197. Security Assistance Act, 2002, § 1231. The countries covered include Albania, Bulgaria, Croatia, Estonia, the Former Yugoslav Republic of Macedonia, Georgia, India, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Pakistan, Romania, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. *Id.*

198. *Id.* § 1234; see also 22 U.S.C.S. 2321j(c)(2).

199. Pub. L. No. 107-296, 116 Stat. 296 (2002).

200. *Id.* § 831.

201. See 10 U.S.C. § 2371 (2000).

202. Homeland Security Act § 832.

203. *Id.* § 833.

acquisition threshold<sup>205</sup> to \$200,000 for contracts within the United States and \$300,000 for contracts outside the United States.<sup>206</sup> Addressing commercial item acquisitions, the HSA gives the SHS the broad authority to “deem any item or service to be a commercial item for the purpose of Federal procurement laws” and increases the DHS’s threshold for using simplified acquisition procedures to buy such commercial items<sup>207</sup> to \$7.5 million.<sup>208</sup>

The HSA also directs revision of the FAR’s rules on unsolicited proposals.<sup>209</sup> Specifically, Congress instructs the revised regulations to require the agency “contact point” to consider, “before initiating a comprehensive evaluation,” that the unsolicited proposal “is not submitted in response to a published agency requirement” and “contains technical and cost information for evaluation.”<sup>210</sup> Finally, the HSA prohibits the SHS from contracting with “corporate expatriates,” U.S. companies that have relocated outside the country. The provision is not as stringent as originally proposed; the HSA permits the SHS to waive the prohibition if the interest of homeland security requires, to prevent the loss of any jobs in the United States, or to prevent additional costs to the government.<sup>211</sup>

### *Federal Emergency Procurement Flexibility*

The HSA gives all executive agencies<sup>212</sup> additional authority to use streamlined acquisition procedures for procuring property and services for use in the “defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack,” provided that the DHS issues the solicitations for such procurements during the one-year period after the HSA’s enactment.<sup>213</sup> For Section 852 acquisitions in support of humanitarian or peacekeeping operations or contingency operations, the HSA increases the simplified acquisition threshold<sup>214</sup> to \$200,000 for contracts and purchases inside the United States and \$300,000 for such purchases outside the United States.<sup>215</sup> The HSA also increases the micro-purchase threshold<sup>216</sup> for Section 852 purchases to \$7500<sup>217</sup> and authorizes executive agencies to use simplified acquisition procedures in all Section 852 procurements “without regard to whether the property or services are commercial items.”<sup>218</sup> Finally, the HSA eliminates the \$5 million threshold<sup>219</sup> that generally applies in such situations.<sup>220</sup>

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204. *Id.*; cf. 41 U.S.C. § 428 (2000).

205. *See* 41 U.S.C. § 403(11).

206. Homeland Security Act § 833.

207. *See* 41 U.S.C. 253(g)(1)(B); 427(a)(2).

208. Homeland Security Act § 833.

209. *Id.* § 834. For current guidance on rules and procedures for accepting and evaluating unsolicited proposals, see FAR, *supra* note 134, subpt. 15.6.

210. Homeland Security Act § 834.

211. *Id.* § 835.

212. The term “executive agency” has the same meaning as in the Office of Federal Procurement Act. *Id.* § 851; *see also* 41 U.S.C. 403(1).

213. Homeland Security Act § 852. Section 856 states that executive agencies “shall” use authorized streamlined acquisition procedures when appropriate for “section 852” procurements. *Id.* § 856 (citing 41 U.S.C. § 253 (addressing other than competitive procurement procedures); 41 U.S.C. § 253j (relating to task and delivery orders); 10 U.S.C. § 2304 (2000) (addressing other-than-competitive procurement procedures); 10 U.S.C. § 2304c (relating to task and delivery orders; 41 U.S.C. 416(c) (2000) (making otherwise required procurement notices inapplicable in some circumstances)).

214. 10 U.S.C.S. § 2302(7) (LEXIS 2003) ; 41 U.S.C.S. §§ 259(d), 403(11) (LEXIS 2003).

215. Homeland Security Act § 853.

216. *See* 41 U.S.C.S. § 428.

217. Homeland Security Act § 853.

218. 10 U.S.C.S. § 2304(g); 41 U.S.C.S. §§ 253(g), 427, 430.

219. 10 U.S.C.S. § 2304(g)(1)(B); 41 U.S.C.S. §§ 253(g)(1)(B), 427(a)(2).

220. Homeland Security Act § 855. The HSA directs the OMB to issue guidance and procedures for using simplified acquisition methods for procurements exceeding \$5 million. *Id.*

The HSA clearly states that the authority for military and defense activities remains with the DOD; it specifies that the SHS has no authority for such actions and that the HSA in no way limits the DOD's existing authority.<sup>221</sup>

### **AFGHANISTAN FREEDOM SUPPORT ACT OF 2002**

On 4 December 2002, President Bush signed the Afghanistan Freedom Support Act of 2002 (AFSA).<sup>222</sup> In Title II of the AFSA, Congress authorizes the President to exercise "drawdown" authority under the Foreign Assistance Act<sup>223</sup> to support Afghanistan and other eligible foreign countries and international organizations participating in operations aimed at restoring or maintaining peace and security in Afghanistan.<sup>224</sup> The AFSA authorizes up to \$300 million in assistance, and may include providing defense articles and services, counter-narcotics assistance, crime control and police training services, military education and training, and other support; the U.S. government may acquire most or all of this assistance by contract.<sup>225</sup> The President must notify the appropriate congressional committees at least fifteen days before providing the assistance.<sup>226</sup> The AFSA's drawdown authority expires on 30 September 2006.<sup>227</sup> Major Huyser.

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221. *Id.* § 876.

222. Pub. L. No. 107-327, 116 Stat. 2797 (2002).

223. *See* 22 U.S.C. § 2318 (2000).

224. Afghanistan Freedom Support Act §§ 202-203.

225. *Id.* § 202.

226. *Id.* § 205.

227. *Id.* § 208.

## Appendix B

### Government Contract & Fiscal Law Web Sites and Electronic Newsletters

Table I below contains hypertext links to Web sites that practitioners in the government contract and fiscal law fields utilize most often. If you are viewing this document in an on-line commercial database, you should be able to click on the Web address in the second column. Your computer's Web browser should automatically open the Web site.

Table II contains links to Web sites that allow you to subscribe to various electronic newsletters of interest to practitioners. Once you have joined one of these news lists, the list administrator will automatically forward electronic news announcements to your E-mail address. These electronic newsletters are convenient methods of keeping informed about recent or upcoming changes in the field of law. Major Sharp.

**Table I—Links to Common Contract Law Sources**

Web Site Name	Address
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A

Acquisition Reform Network (AcqNet)	<a href="http://www.arnet.gov">http://www.arnet.gov</a>
Acquisition Reform Virtual Library	<a href="http://www.arnet.gov/Library/">http://www.arnet.gov/Library/</a>
Acquisition Review Quarterly (from DAU)	<a href="http://www.dau.mil/pubs/arqtoc.asp">http://www.dau.mil/pubs/arqtoc.asp</a>
Acquisition Sharing Knowledge System (formerly the Defense Acquisition Deskbook)	<a href="http://deskbook.dau.mil/jsp/default.jsp">http://deskbook.dau.mil/jsp/default.jsp</a>
Acquisition Streamlining and Standardization Information System (ASSIST)	<a href="http://astimage.daps.dla.mil/online/new/">http://astimage.daps.dla.mil/online/new/</a>
ACQWeb (Office of Undersecretary of Defense for Acquisition Logistics & Technology)	<a href="http://www.acq.osd.mil">http://www.acq.osd.mil</a>
Agency for International Development	<a href="http://www.info.usaid.gov">http://www.info.usaid.gov</a>
Air Force Acquisition	<a href="http://www.safaq.hq.af.mil/">http://www.safaq.hq.af.mil/</a>
Air Force Acquisition Training Office	<a href="http://www.safaq.hq.af.mil/acq_workf/training/">http://www.safaq.hq.af.mil/acq_workf/training/</a>
Air Force Alternative Dispute Resolution (ADR) Program	<a href="http://www.adr.af.mil">http://www.adr.af.mil</a>
Air Force Audit Agency	<a href="https://www.afaq.hq.af.mil/domainck/index.shtml">https://www.afaq.hq.af.mil/domainck/index.shtml</a>
Air Force FAR Site	<a href="http://farsite.hill.af.mil">http://farsite.hill.af.mil</a>
Air Force Financial Management & Comptroller	<a href="http://www.saffm.hq.af.mil/">http://www.saffm.hq.af.mil/</a>
Air Force General Counsel	<a href="http://www.safgc.hq.af.mil/">http://www.safgc.hq.af.mil/</a>
Air Force Home Page	<a href="http://www.af.mil/">http://www.af.mil/</a>
Air Force Logistics Management Agency	<a href="http://www.aflma.hq.af.mil/">http://www.aflma.hq.af.mil/</a>

Air Force Materiel Command	<a href="https://www.afmc-mil.wpafb.af.mil/">https://www.afmc-mil.wpafb.af.mil/</a>
Air Force Materiel Command Contracting Toolkit	<a href="https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkoprl.htm">https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkoprl.htm</a>
Air Force Materiel Command Staff Judge Advocate	<a href="https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/JA/">https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/JA/</a>
Air Force Publications	<a href="http://www.e-publishing.af.mil/">http://www.e-publishing.af.mil/</a>
American Bar Administration (ABA) Legal Technology Resource Center	<a href="http://www.lawtechnology.org/lawlink/home.html">http://www.lawtechnology.org/lawlink/home.html</a>
American Bar Administration (ABA) Network	<a href="http://www.abanet.org/">http://www.abanet.org/</a>
American Bar Administration (ABA) Public Contract Law Journal (PCLJ)	<a href="http://www.abanet.org/contract/operations/lawjournal/journal.html">http://www.abanet.org/contract/operations/lawjournal/journal.html</a>
American Bar Administration (ABA) Public Contract Law Section	<a href="http://www.abanet.org/contract/">http://www.abanet.org/contract/</a>
American Bar Administration (ABA) Public Contract Law Section Webpage on Agency Level Bid Protests	<a href="http://www.abanet.org/contract/federal/bidpro/agen_bid.html">http://www.abanet.org/contract/federal/bidpro/agen_bid.html</a>
Armed Services Board of Contract Appeals (ASBCA)	<a href="http://www.law.gwu.edu/asbca">http://www.law.gwu.edu/asbca</a>
Army Acquisition (ASA(ALT))	<a href="https://webportal.saalt.army.mil/">https://webportal.saalt.army.mil/</a>
Army Acquisition Corps	<a href="http://asc.rdaisa.army.mil/default.cfm">http://asc.rdaisa.army.mil/default.cfm</a>
Army Audit Agency	<a href="http://www.hqda.army.mil/AAAWEB/">http://www.hqda.army.mil/AAAWEB/</a>
Army Contracting Agency	<a href="http://aca.saalt.army.mil/">http://aca.saalt.army.mil/</a>
Army Corps of Engineers Home Page	<a href="http://www.usace.army.mil/">http://www.usace.army.mil/</a>
Army Corps of Engineers Legal Services	<a href="http://www.hq.usace.army.mil/cecc/maincc.htm">http://www.hq.usace.army.mil/cecc/maincc.htm</a>
Army Financial Management & Comptroller	<a href="http://www.asafm.army.mil/">http://www.asafm.army.mil/</a>
Army General Counsel	<a href="http://www.hqda.army.mil/ogc/">http://www.hqda.army.mil/ogc/</a>
Army Home Page	<a href="http://www.army.mil/">http://www.army.mil/</a>
Army Materiel Command	<a href="http://www.amc.army.mil/">http://www.amc.army.mil/</a>
Army Materiel Command Command Counsel	<a href="http://www.amc.army.mil/amc/command_counsel/">http://www.amc.army.mil/amc/command_counsel/</a>
Army Portal	<a href="https://www.us.army.mil/portal/portal_home.jhtml">https://www.us.army.mil/portal/portal_home.jhtml</a>
Army Publications	<a href="http://www.usapa.army.mil">http://www.usapa.army.mil</a>
Army Single Face to Industry (ASFI)	<a href="http://acquisition.army.mil/">http://acquisition.army.mil/</a>

## B

Bid Protests Webpage from the American Bar Administration (ABA) Public Contract Law Section	<a href="http://www.abanet.org/contract/federal/bidpro/agen_bid.html">http://www.abanet.org/contract/federal/bidpro/agen_bid.html</a>
Boards of Contract Appeals Bar Association	<a href="http://www.bcabar.org/">http://www.bcabar.org/</a>
Budget of the United States	<a href="http://w3.access.gpo.gov/usbudget/index.html">http://w3.access.gpo.gov/usbudget/index.html</a>

## C

Central Contractor Registration (CCR)	<a href="http://www.ccr.gov/">http://www.ccr.gov/</a>
Coast Guard Home Page	<a href="http://www.uscg.mil">http://www.uscg.mil</a>
Code of Federal Regulations	<a href="http://www.access.gpo.gov/nara/cfr/cfr-table-search.html">http://www.access.gpo.gov/nara/cfr/cfr-table-search.html</a>
Electronic Code of Federal Regulations (eCFR)	<a href="http://www.access.gpo.gov/ecfr">http://www.access.gpo.gov/ecfr</a>
Comptroller General Appropriation Decisions	<a href="http://www.gao.gov/decisions/appro/appro.htm">http://www.gao.gov/decisions/appro/appro.htm</a>
Comptroller General Bid Protest Decisions	<a href="http://www.gao.gov/decisions/bidpro/bidpro.htm">http://www.gao.gov/decisions/bidpro/bidpro.htm</a>
Comptroller General Decisions via GPO Access	<a href="http://www.access.gpo.gov/su_docs/aces/aces170.shtml">http://www.access.gpo.gov/su_docs/aces/aces170.shtml</a>
Comptroller General Legal Products	<a href="http://www.gao.gov/legal.htm">http://www.gao.gov/legal.htm</a>
Congressional Bills	<a href="http://www.access.gpo.gov/congress/cong009.html">http://www.access.gpo.gov/congress/cong009.html</a>
Congressional Documents	<a href="http://www.access.gpo.gov/su_docs/legislative.html">http://www.access.gpo.gov/su_docs/legislative.html</a>
Congressional Documents via Thomas	<a href="http://thomas.loc.gov/">http://thomas.loc.gov/</a>
Congressional Record	<a href="http://www.access.gpo.gov/su_docs/aces/aces150.html">http://www.access.gpo.gov/su_docs/aces/aces150.html</a>
Contract Pricing Reference Guides	<a href="http://www.acq.osd.mil/dp/cpf/pgv1_0/pgchindex.html">http://www.acq.osd.mil/dp/cpf/pgv1_0/pgchindex.html</a>
Cornell University Law School (extensive list of links to legal research sites)	<a href="http://www.law.cornell.edu">www.law.cornell.edu</a>
Cost Accounting Standards (CAS – found in the Appendix to the FAR)	<a href="http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/farapndx1.htm">http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/farapndx1.htm</a>
Cost Accounting Standards Board (CASB)	<a href="http://www.whitehouse.gov/omb/procurement/casb.html">http://www.whitehouse.gov/omb/procurement/casb.html</a>
Court of Appeals for the Federal Circuit (CAFC)	<a href="http://www.fedcir.gov/">http://www.fedcir.gov/</a>
Court of Federal Claims (COFC)	<a href="http://www.uscfc.uscourts.gov/">http://www.uscfc.uscourts.gov/</a>

## D

Davis Bacon Wage Determinations	<a href="http://www.gpo.gov/davisbacon/">http://www.gpo.gov/davisbacon/</a>
Debarred List (known as the Excluded Parties Listing System)	<a href="http://epls.arnet.gov">http://epls.arnet.gov</a>
Defense Acquisition Deskbook (now known as the Acquisition Knowledge Sharing System)	<a href="http://deskbook.dau.mil/jsp/default.jsp">http://deskbook.dau.mil/jsp/default.jsp</a>
Defense Acquisition Regulations Directorate (the DAR Council)	<a href="http://www.acq.osd.mil/dp/dars/">http://www.acq.osd.mil/dp/dars/</a>
Defense Acquisition University (DAU)	<a href="http://www.dau.mil/">http://www.dau.mil/</a>
Defense Competitive Sourcing & Privatization	<a href="http://www.acq.osd.mil/installation/csp/">http://www.acq.osd.mil/installation/csp/</a>
Defense Comptroller	<a href="http://www.dtic.mil/comptroller/">http://www.dtic.mil/comptroller/</a>

Defense Contract Audit Agency (DCAA)	<a href="http://www.dcaa.mil/">http://www.dcaa.mil/</a>
Defense Contract Management Agency (DCMA)	<a href="http://www.dcma.mil/">http://www.dcma.mil/</a>
Defense Electronic Business Program Office (formerly JECPO)	<a href="http://www.defenselink.mil/acq/ebusiness/">http://www.defenselink.mil/acq/ebusiness/</a>
Defense Finance and Accounting Service (DFAS)	<a href="http://www.dfas.mil/">http://www.dfas.mil/</a>
Defense Finance and Accounting Service (DFAS) Electronic Commerce Home Page	<a href="http://www.dfas.mil/ecedi/">http://www.dfas.mil/ecedi/</a>
Defense Logistics Agency (DLA) Electronic Commerce Home Page	<a href="http://www.supply.dla.mil/Default.asp">http://www.supply.dla.mil/Default.asp</a>
Defense Procurement	<a href="http://www.acq.osd.mil/dp/">http://www.acq.osd.mil/dp/</a>
Defense Standardization Program	<a href="http://dsp.dla.mil/">http://dsp.dla.mil/</a>
Defense Systems Management College (DSMC)	<a href="http://www.dsmc.dsm.mil/default.htm">http://www.dsmc.dsm.mil/default.htm</a>
Defense Technical Information Center	<a href="http://www.dtic.mil">http://www.dtic.mil</a>
Department of Commerce, Office of General Counsel, Contract Law Division	<a href="http://www.contracts.ogc.doc.gov/cld/cld.html">http://www.contracts.ogc.doc.gov/cld/cld.html</a>
Department of Justice	<a href="http://www.usdoj.gov">http://www.usdoj.gov</a>
Department of Justice Legal Opinions	<a href="http://www.usdoj.gov/olc/opinionspage.htm">http://www.usdoj.gov/olc/opinionspage.htm</a>
Department of Veterans Affairs	<a href="http://www.va.gov">http://www.va.gov</a>
Department of Veterans Affairs Board of Contract Appeals	<a href="http://www.va.gov/bca/index.htm">http://www.va.gov/bca/index.htm</a>
Directorate for Information Operations and Reports Home Page - Procurement Coding Manual/FIPS/CIN	<a href="http://web1.whs.osd.mil/diorhome.htm">http://web1.whs.osd.mil/diorhome.htm</a>
DOD Acquisition Reform (DUSD(AR))	<a href="http://www.acq.osd.mil/ar/">http://www.acq.osd.mil/ar/</a>
DOD Busopps	<a href="http://www.dodbusopps.com/">http://www.dodbusopps.com/</a>
DOD Contract Pricing Reference Guide	<a href="http://www.acq.osd.mil/dp/cpf/pgv1_0/index.html">http://www.acq.osd.mil/dp/cpf/pgv1_0/index.html</a>
DOD E-Mail	<a href="https://email.prod.dodonline.net/scripts/emLogon.asp">https://email.prod.dodonline.net/scripts/emLogon.asp</a>
DOD Financial Management Regulations	<a href="http://www.dtic.mil/comptroller/fmr/">http://www.dtic.mil/comptroller/fmr/</a>
DOD General Counsel	<a href="http://www.defenselink.mil/dodgc/">http://www.defenselink.mil/dodgc/</a>
DOD Home Page	<a href="http://www.defenselink.mil">http://www.defenselink.mil</a>
DOD Inspector General (Audit Reports)	<a href="http://www.dodig.osd.mil">http://www.dodig.osd.mil</a>
DOD Instructions and Directives	<a href="http://www.dtic.mil/whs/directives/">http://www.dtic.mil/whs/directives/</a>
DOD Purchase Card Program	<a href="http://purchasecard.saalt.army.mil/default.htm">http://purchasecard.saalt.army.mil/default.htm</a>
DOD Single Stock Point for Military Specifications, Standards and Related Publications	<a href="http://www.dodssp.daps.mil/">http://www.dodssp.daps.mil/</a>
DOD Standards of Conduct Office (SOCO)	<a href="http://www.defenselink.mil/dodgc/defense_ethics/">http://www.defenselink.mil/dodgc/defense_ethics/</a>



## E

Excluded Parties Listing System	<a href="http://epls.arnet.gov">http://epls.arnet.gov</a>
Executive Orders	<a href="http://www.access.gpo.gov/nara/nara003.html">http://www.access.gpo.gov/nara/nara003.html</a>
Executive Orders (alternate site)	<a href="http://www.archives.gov/federal_register/executive_orders/disposition_tables.html">http://www.archives.gov/federal_register/executive_orders/disposition_tables.html</a>
Export Administration Regulations	<a href="http://w3.access.gpo.gov/bis/index.html">http://w3.access.gpo.gov/bis/index.html</a>

## F

FAR Site (Air Force)	<a href="http://farsite.hill.af.mil">http://farsite.hill.af.mil</a>
Federal Acquisition Institute (FAI)	<a href="http://www.faionline.com/kc/login/login.asp?kc_ident=kc0001">http://www.faionline.com/kc/login/login.asp?kc_ident=kc0001</a>
Federal Acquisition Regulation (FAR) (GSA)	<a href="http://www.arnet.gov/far/">http://www.arnet.gov/far/</a>
Federal Business Opportunities (FedBizOpps)	<a href="http://www.fedbizopps.gov/">http://www.fedbizopps.gov/</a>
Federal Legal Information Through Electronics (FLITE)	<a href="https://aflsa.jag.af.mil/flite/home.html">https://aflsa.jag.af.mil/flite/home.html</a>
Federal Marketplace	<a href="http://www.fedmarket.com/">http://www.fedmarket.com/</a>
Federal Prison Industries, Inc (UNICOR)	<a href="http://www.unicor.gov/">http://www.unicor.gov/</a>
Federal Procurement Data System	<a href="http://www.fpsc.gov/">http://www.fpsc.gov/</a>
Federal Register	<a href="http://www.access.gpo.gov/nara">http://www.access.gpo.gov/nara</a>
Federal Register via GPO Access	<a href="http://www.access.gpo.gov/su_docs/aces/aces140.html">http://www.access.gpo.gov/su_docs/aces/aces140.html</a>
Federally Funded R&D Centers (FFRDC)	<a href="http://www.nsf.gov/sbe/srs/nsf99334/start.htm">http://www.nsf.gov/sbe/srs/nsf99334/start.htm</a>
Financial Management Regulations	<a href="http://www.dtic.mil/comptroller/fmr/">http://www.dtic.mil/comptroller/fmr/</a>
FindLaw	<a href="http://www.findlaw.com">http://www.findlaw.com</a>
FirstGov	<a href="http://www.firstgov.gov/">http://www.firstgov.gov/</a>

## G

General Accounting Office (GAO) Comptroller General Appropriation Decisions	<a href="http://www.gao.gov/decisions/appro/appro.htm">http://www.gao.gov/decisions/appro/appro.htm</a>
General Accounting Office (GAO) Comptroller General Bid Protest Decisions	<a href="http://www.gao.gov/decisions/bidpro/bidpro.htm">http://www.gao.gov/decisions/bidpro/bidpro.htm</a>
General Accounting Office (GAO) Comptroller General Decisions via GPO Access	<a href="http://www.access.gpo.gov/su_docs/aces/aces170.shtml">http://www.access.gpo.gov/su_docs/aces/aces170.shtml</a>

General Accounting Office (GAO) Comptroller General Legal Products	<a href="http://www.gao.gov/legal.htm">http://www.gao.gov/legal.htm</a>
General Accounting Office (GAO) Home Page	<a href="http://www.gao.gov">http://www.gao.gov</a>
General Services Administration (GSA) Advantage	<a href="http://www.gsa.gov/Portal/content/offerings_content.jsp?contentOID=116381&amp;contentType=1004">http://www.gsa.gov/Portal/content/offerings_content.jsp?contentOID=116381&amp;contentType=1004</a>
General Services Administration (GSA) Federal Supply Service (FSS)	<a href="http://www.gsa.gov/Portal/content/orgs_content.jsp?contentOID=22892&amp;contentType=1005">http://www.gsa.gov/Portal/content/orgs_content.jsp?contentOID=22892&amp;contentType=1005</a>
General Services Administration Board of Contract Appeals (GSABCA)	<a href="http://www.gsbca.gsa.gov/">http://www.gsbca.gsa.gov/</a>
GovCon (Government Contracting Industry)	<a href="http://www.govcon.com/content/homepage">http://www.govcon.com/content/homepage</a>
Government Contracts Resource Guide	<a href="http://www.law.gwu.edu/burns/research/gcrg/gcrg.htm">http://www.law.gwu.edu/burns/research/gcrg/gcrg.htm</a>
Government Online Learning Center	<a href="http://www.golearn.gov/">http://www.golearn.gov/</a>
Government Printing Office (GPO)	<a href="http://www.gpo.gov">http://www.gpo.gov</a>
Government Printing Office Board of Contract Appeals (GPOBCA)	<a href="http://www.gpo.gov/contractappeals/index.html">http://www.gpo.gov/contractappeals/index.html</a>

## J

JAGCNET (Army JAG Corps Homepage)	<a href="http://www.jagcnet.army.mil/">http://www.jagcnet.army.mil/</a>
JAGCNET (Contract & Fiscal Law publications)	<a href="http://www.jagcnet.army.mil/ContractLaw">http://www.jagcnet.army.mil/ContractLaw</a>
JAGCNET (The Army JAG School Homepage)	<a href="http://www.jagcnet.army.mil/TJAGSA">http://www.jagcnet.army.mil/TJAGSA</a>
Javits-Wagner-O'Day Act (JWOD)	<a href="http://www.jwod.gov/jwod/index.html">http://www.jwod.gov/jwod/index.html</a>
Joint Electronic Library (Joint Publications)	<a href="http://www.dtic.mil/doctrine/jel/jointpub.htm">http://www.dtic.mil/doctrine/jel/jointpub.htm</a>
Joint Travel Regulations (JFTR/JTR)	<a href="http://www.dtic.mil/perdiem/trvlregs.html">http://www.dtic.mil/perdiem/trvlregs.html</a>

## L

Library of Congress	<a href="http://lcweb.loc.gov">http://lcweb.loc.gov</a>
Logistics Joint Administrative Management Support Services (LOGJAMMS)	<a href="http://www.forscom.army.mil/aacc/LOGJAMSS/default.htm">http://www.forscom.army.mil/aacc/LOGJAMSS/default.htm</a>

## M

Marine Corps Home Page	<a href="http://www.usmc.mil">http://www.usmc.mil</a>
Marine Corps Regulations	<a href="https://www.doctrine.quantico.usmc.mil/">https://www.doctrine.quantico.usmc.mil/</a>
MEGALAW	<a href="http://www.megalaw.com">http://www.megalaw.com</a>

Mil Standards (DoD Single Stock Point for Military Specifications, Standards and Related Publications)	<a href="http://www.dodssp.daps.mil/">http://www.dodssp.daps.mil/</a>
MWR Home Page (Army)	<a href="http://www.ArmyMWR.com">http://www.ArmyMWR.com</a>

## N

NAF Financial (Army)	<a href="http://www.asafm.army.mil/fo/fod/naf/naf.asp">http://www.asafm.army.mil/fo/fod/naf/naf.asp</a>
National Aeronautics and Space Administration (NASA) Aquisition	<a href="http://prod.nais.nasa.gov/cgi-bin/nais/index.cgi">http://prod.nais.nasa.gov/cgi-bin/nais/index.cgi</a>
National Industries for the Blind (NIB)	<a href="http://www.nib.org">www.nib.org</a>
National Industries for the Severely Handicapped (NISH)	<a href="http://www.nish.org">www.nish.org</a>
National Partnership for Reinventing Government (aka National Performance Review or NPR). Note: the library is now closed & only maintained in archive.	<a href="http://govinfo.library.unt.edu/npr/index.htm">http://govinfo.library.unt.edu/npr/index.htm</a>
Naval Supply Systems Command (NAVSUP)	<a href="http://www.navsup.navy.mil/index.jsp">http://www.navsup.navy.mil/index.jsp</a>
Navy Acquisition Reform	<a href="http://www.acq-ref.navy.mil/index.cfm">http://www.acq-ref.navy.mil/index.cfm</a>
Navy Electronic Commerce On-line	<a href="http://www.neco.navy.mil/">http://www.neco.navy.mil/</a>
Navy Financial Management and Comptroller	<a href="http://www.fmo.navy.mil/policies/regulations.htm">http://www.fmo.navy.mil/policies/regulations.htm</a>
Navy Financial Management Career Center	<a href="http://www.nfmc.navy.mil/index.htm#HomepageLogo">http://www.nfmc.navy.mil/index.htm#HomepageLogo</a>
Navy General Counsel	<a href="http://www.ogc.navy.mil/">http://www.ogc.navy.mil/</a>
Navy Home Page	<a href="http://www.navy.mil">http://www.navy.mil</a>
Navy Regulations	<a href="http://neds.nebt.daps.mil/">http://neds.nebt.daps.mil/</a>
Navy Research, Development and Acquisition	<a href="http://www.hq.navy.mil/RDA/">http://www.hq.navy.mil/RDA/</a>
North American Industry Classification System (formerly the Standard Industry Code)	<a href="http://www.osha.gov/oshstats/sicser.html">http://www.osha.gov/oshstats/sicser.html</a>

## O

Office of Acquisition Policy within GSA	<a href="http://hydra.gsa.gov/staff/ap.htm">http://hydra.gsa.gov/staff/ap.htm</a>
Office of Federal Procurement Policy (OFPP) Best Practices Guides	<a href="http://www.acqnet.gov/Library/OFPP/BestPractices/">http://www.acqnet.gov/Library/OFPP/BestPractices/</a>
Office of Government Ethics (OGE)	<a href="http://www.usoge.gov">http://www.usoge.gov</a>
Office of Management and Budget (OMB)	<a href="http://www.whitehouse.gov/omb/">http://www.whitehouse.gov/omb/</a>

## P

Per Diem Rates (CONUS)	<a href="http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml">http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml</a>
Per Diem Rates (Military)	<a href="http://www.dtic.mil/perdiem/">http://www.dtic.mil/perdiem/</a>
Per Diem Rates (OCONUS)	<a href="http://www.state.gov/m/a/als/prdm/">http://www.state.gov/m/a/als/prdm/</a>
Producer Price Index	<a href="http://www.bls.gov/ppi/">http://www.bls.gov/ppi/</a>
Program Manager (a periodical from DAU)	<a href="http://www.dau.mil/pubs/pmtoc.asp">http://www.dau.mil/pubs/pmtoc.asp</a>
Public Contract Law Journal	<a href="http://www.law.gwu.edu/pclj/">http://www.law.gwu.edu/pclj/</a>
Public Papers of the President of the United States	<a href="http://www.access.gpo.gov/nara/pubpaps/srchpaps.html">http://www.access.gpo.gov/nara/pubpaps/srchpaps.html</a>
Purchase Card Program	<a href="http://purchasecard.saalt.army.mil/default.htm">http://purchasecard.saalt.army.mil/default.htm</a>

## R

Rand Reports and Publications	<a href="http://www.rand.org/publications/">http://www.rand.org/publications/</a>
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## S

SearchMil (search engine for .mil websites)	<a href="http://www.searchmil.com/">http://www.searchmil.com/</a>
Service Contract Act Directory of Occupations	<a href="http://www.dol.gov/esa/regs/compliance/whd/wage/main.htm">http://www.dol.gov/esa/regs/compliance/whd/wage/main.htm</a>
Share A-76 (DOD site)	<a href="http://emissary.acq.osd.mil/inst/share.nsf">http://emissary.acq.osd.mil/inst/share.nsf</a>
Small Business Administration (SBA)	<a href="http://www.sba.gov/">http://www.sba.gov/</a>
Small Business Administration (SBA) Government Contracting Home Page	<a href="http://www.sba.gov/GC/">http://www.sba.gov/GC/</a>
Small Business Innovative Research (SBIR)	<a href="http://www.acq.osd.mil/sadbu/sbir/">http://www.acq.osd.mil/sadbu/sbir/</a>
Standard Industry Code (now called the North American Industry Classification System)	<a href="http://www.osha.gov/oshstats/sicser.html">http://www.osha.gov/oshstats/sicser.html</a>
Steve Schooner's homepage	<a href="http://www.law.gwu.edu/facweb/sschooner/">http://www.law.gwu.edu/facweb/sschooner/</a>

## T

Travel Regulations	<a href="http://www.dtic.mil/perdiem/trvlregs.html">http://www.dtic.mil/perdiem/trvlregs.html</a>
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## U

U.S. Business Advisor (sponsored by SBA)	<a href="http://www.business.gov">http://www.business.gov</a>
U.S. Code	<a href="http://uscode.house.gov">http://uscode.house.gov</a>
U.S. Code	<a href="http://www.access.gpo.gov/congress/cong013.html">http://www.access.gpo.gov/congress/cong013.html</a>
U.S. Congress on the Net-Legislative Info	<a href="http://thomas.loc.gov">http://thomas.loc.gov</a>
U.S. Court of Appeals for the Federal Circuit (CAFC)	<a href="http://www.fedcir.gov/">http://www.fedcir.gov/</a>
U.S. Court of Federal Claims	<a href="http://www.uscfc.uscourts.gov/">http://www.uscfc.uscourts.gov/</a>
U.S. Department of Agriculture (USDA) Graduate School	<a href="http://grad.usda.gov/">http://grad.usda.gov/</a>
UNICOR (Federal Prison Industries, Inc.)	<a href="http://www.unicor.gov/">http://www.unicor.gov/</a>

## W

Where in Federal Contracting?	<a href="http://www.wifcon.com/">http://www.wifcon.com/</a>
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**Table II—Government Contract Newsletters**

Newsletter Name	Web Address to Subscribe
Air Force Materiel Command (AFMC) Contract Update	<a href="https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/polvault/e-signup.htm">https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/polvault/e-signup.htm</a>
Army Acquisition Policy	<a href="http://dasapp.saalt.army.mil/register.htm">http://dasapp.saalt.army.mil/register.htm</a>
Defense and Security Publications via GPO Access	<a href="http://listserv.access.gpo.gov/scripts/wa.exe?SUBED1=gpo-defpubs-l&amp;A=1">http://listserv.access.gpo.gov/scripts/wa.exe?SUBED1=gpo-defpubs-l&amp;A=1</a>
Defense Federal Acquisition Regulation Supplement (DFARS) News	<a href="http://www.acq.osd.mil/dp/dars/dfarmail.htm">http://www.acq.osd.mil/dp/dars/dfarmail.htm</a>
DOD Acquisition Initiatives (DUSD(AR))	<a href="http://aitoday.dau.mil/Register.asp">http://aitoday.dau.mil/Register.asp</a>
Federal Acquisition Regulation (FAR) News	<a href="http://www.arnet.gov/far/mailframe.html">http://www.arnet.gov/far/mailframe.html</a>
Federal Register via GPO Access	<a href="http://listserv.access.gpo.gov/scripts/wa.exe?SUBED1=fedregtoc-l&amp;A=1">http://listserv.access.gpo.gov/scripts/wa.exe?SUBED1=fedregtoc-l&amp;A=1</a>
General Accounting Office (GAO) Reports Testimony, and/or Decisions	<a href="http://www.gao.gov/subtest/subscribe.html">http://www.gao.gov/subtest/subscribe.html</a>
Public Laws Issued	<a href="http://hydra.gsa.gov/cgi-bin/wa?SUBED1=publaws-l&amp;A=1">http://hydra.gsa.gov/cgi-bin/wa?SUBED1=publaws-l&amp;A=1</a>